

**§ 2.34 Waters subject to tidal influence; waters subject to the ebb and flow of the tide; mean high water.**

(a) *Waters subject to tidal influence and waters subject to the ebb and flow of the tide* are waters below mean high water. These terms do not include waters above mean high water caused by flood flows, storms, high winds, seismic waves, or other non-lunar phenomena.

(b) *Mean high water* is the average of the height of the diurnal high water at a particular location measured over a lunar cycle of 19 years.

**§ 2.36 Navigable waters of the United States, navigable waters, and territorial waters.**

(a) Except as provided in paragraph (b) of this section, *navigable waters of the United States, navigable waters, and territorial waters* mean, except where Congress has designated them not to be navigable waters of the United States:

(1) Territorial seas of the United States;

(2) Internal waters of the United States that are subject to tidal influence; and

(3) Internal waters of the United States not subject to tidal influence that:

(i) Are or have been used, or are or have been susceptible for use, by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce, notwithstanding natural or man-made obstructions that require portage, or

(ii) A governmental or non-governmental body, having expertise in waterway improvement, determines to be capable of improvement at a reasonable cost (a favorable balance between cost and need) to provide, by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce.

(b) *Navigable waters of the United States and navigable waters*, as used in sections 311 and 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1321 and 1322, mean:

(1) Navigable waters of the United States as defined in paragraph (a) of this section and all waters within the United States tributary thereto; and

(2) Other waters over which the Federal Government may exercise Constitutional authority.

**§ 2.38 Waters subject to the jurisdiction of the United States; waters over which the United States has jurisdiction.**

*Waters subject to the jurisdiction of the United States and waters over which the United States has jurisdiction* mean the following waters—

(a) Navigable waters of the United States, as defined in § 2.36(a).

(b) Waters, other than those under paragraph (a) of this section, that are located on lands for which the United States has acquired title or controls and—

(1) Has accepted jurisdiction according to 40 U.S.C. 255; or

(2) Has retained concurrent or exclusive jurisdiction from the date that the State in which the lands are located entered the Union.

(c) Waters made subject to the jurisdiction of the United States by operation of the international agreements and statutes relating to the former Trust Territory of the Pacific Islands, and waters within the territories and possessions of the United States.

**Subpart C—Availability of Jurisdictional Decisions**

**§ 2.40 Maintenance of decisions.**

(a) From time to time, the Coast Guard makes navigability determinations of specific waterways, or portions thereof, in order to determine its jurisdiction on those waterways. Copies of these determinations are maintained by the District Commander in whose district the waterway is located.

(b) If the district includes portions of the territorial sea, charts reflecting Coast Guard decisions as to the location of the territorial sea baseline for the purposes of Coast Guard jurisdiction are maintained by the District Commander in whose district the portion of the territorial sea is located.

**§ 2.45 Decisions subject to change or modification and availability of lists and charts.**

The determinations referred to in § 2.40 are subject to change or modification. The determinations are made for Coast Guard use at the request of Coast Guard officials. Determinations made or subsequently changed are available to the public under § 1.10–5(b) of this chapter. Inquiries concerning whether a determination has been made for specific waters, for the purposes of Coast Guard jurisdiction, should be directed to the District Commander of the district in which the waters are located.

**PART 26—VESSEL BRIDGE-TO-BRIDGE RADIOTELEPHONE REGULATIONS**

■ 2. The authority citation for part 26 is revised to read as follows:

**Authority:** 14 U.S.C. 2, 33 U.S.C. 1201–1208; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation

No. 0170. Rule 1, International Regulations for the Prevention of Collisions at Sea.

■ 3. In § 26.02, add, in alphabetical order, the definition of “territorial sea” to read as follows:

**§ 26.02 Definitions.**

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*Territorial sea* means all waters as defined in § 2.22(a)(1) of this chapter.

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**PART 62—UNITED STATES AIDS TO NAVIGATION SYSTEM**

■ 4. The authority citation for part 62 is revised to read as follows:

**Authority:** 14 U.S.C. 85; 33 U.S.C. 1222, 1233; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.

■ 5. In § 62.3, revise paragraph (g) to read as follows:

**§ 62.3 Definition of terms.**

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(g) *Navigable waters of the United States*. The term navigable waters of the United States is defined in § 2.36(a) of this chapter.

**PART 64—MARKING OF STRUCTURES, SUNKEN VESSELS AND OTHER OBSTRUCTIONS**

■ 6. The authority citation for part 64 is revised to read as follows:

**Authority:** 14 U.S.C. 633; 33 U.S.C. 409, 1231; 42 U.S.C. 9118; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.

■ 7. In § 64.06, add, in alphabetical order, a definition of “navigable waters of the United States” to read as follows:

**§ 64.06 Definition of terms.**

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*Navigable waters of the United States* means those waters described in § 2.36(a) of this chapter, specifically including the waters described in § 2.22(a)(2) of this chapter.

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**PART 95—OPERATING A VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL OR A DANGEROUS DRUG**

■ 8. The authority citation for part 95 is revised to read as follows:

**Authority:** 33 U.S.C. 2071; 46 U.S.C. 2302; Department of Homeland Security Delegation No. 0170.

■ 9. In § 95.010, add, in alphabetical order, a definition of “waters subject to the jurisdiction of the United States” to read as follows: