



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

CECW-CO (15-6b2)

03-Mar-23

**MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS AND
DISTRICT COMMANDS, CHIEFS, OPERATIONS DIVISIONS**

**SUBJECT: Process for Recommending Deauthorization of Federal Navigation Channels
Without Structures**

1. Purpose. Provide minimum documentation requirements and process to establish whether a federal interest continues to exist for commercial navigation, and if not, to recommend deauthorization of certain federal navigation channels, or portions of federal navigation channels, without structures that meet all of the following criteria: channel is no longer in use by any commercial traffic; channel is not used substantially by motorized recreational vessel traffic; channel does not possess or have any national security purpose, and, in other words, is no longer used for its authorized purpose. The intended outcome is to recommend to Congress deauthorization of certain channels that no longer meet Congressionally authorized purposes or provide national security needs. If Congress concurs, the U.S. Army Corps of Engineers (USACE) would expect to save federal dollars and staff oversight time (e.g. less funds required for survey) as a result of these decisions.

2. References.

- a. 40 CFR 1500 et seq., CEQ Regulations for Implementing the Procedural Provisions of NEPA, 85 FR 43304 et seq., July 16, 2020.
- b. 33 CFR 230, U.S. Army Corps Procedures for Implementing NEPA.
- c. Interim Guidance on the Conduct of Disposition Studies, 22 August 2016.
- d. Revised Implementation Guidance for Section 1168 of WRDA 2018, Disposition of Projects.
- e. CEMP-CR Memo, Real Estate Policy Guidance Letter 33--Interim Guidance on Disposition Studies, 28 SEP 16.

3. Applicability. The process established in this memorandum applies only to deauthorization recommendations that meet the following criteria (all must apply/no exceptions):

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- a. The authorized Civil Works project (or portion of a Civil Works project) that is being proposed to be deauthorized consists of Federal navigation channel only, no adjacent land included.
 - b. The authorized Civil Works project (or portion of a Civil Works project) that is being proposed to be deauthorized does not include any structures or improvements.
 - c. The authorized Civil Works project (or portion of a Civil Works project) that is being proposed to be deauthorized does not include any fee lands owned by the United States. The District Real Estate must determine if the project has associated real property interests and if found to have temporary or permanent easements, prepare a Real Estate Appendix for the Study Report per reference 1.e. If a Real Estate Appendix is required, the minimum documentation includes identification of the project real property inventory, owner(s), the proposed authority and process for disposal, and the estimated costs and timeline to accomplish disposal.
 - d. The authorized Civil Works project (or portion of a Civil Works project) that is being proposed to be deauthorized is no longer used by any commercial traffic.
 - e. The authorized Civil Works project (or portion of a Civil Works project) that is being proposed to be deauthorized no longer supports any substantial motorized recreation vessel traffic.
 - f. The authorized Civil Works project (or portion of a Civil Works project) that is being proposed to be deauthorized does not serve any national security needs or purposes.
 - g. The proposed deauthorization of the Civil Works project (or portion of a Civil Works project) would not result in any significant impact on the human environment (no Environmental Impact Statement under the National Environmental Policy Act required).
4. Direction. In most cases of federal navigation channels that have not been maintained for at least several decades, do not support commercial or substantial recreational traffic, and do not contain structures, it is expected that the federal interest has ceased and that their deauthorization would not result in significant impacts on the human environment. In these cases, an analysis of current federal interest in the project should be prepared along with a project-specific environmental assessment (EA) to determine if there are any special circumstances that would warrant the preparation of an environmental impact statement (EIS). The length and complexity of the federal interest determination and National Environmental Policy Act (NEPA) documentation is generally proportional to the potential environmental effects and project size. In the case of projects that meet the criteria in paragraph 3, it is expected that only minimal documentation – not a feasibility study or

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detailed analysis - would be required to support a proposal for deauthorization. In addition to compliance with NEPA, compliance with other applicable environmental and cultural resource statutes must be completed in parallel with the NEPA process. If at any time during the following process, as further elaborated in Enclosures 1 and 2, it appears that determination of a federal interest requires a more detailed analysis, then the process should revert to the procedures incorporated in References 1.c. and 1.d.

- a. Federal Interest Documentation Requirements: Analysis of the current federal interest in the project should be documented as outlined in Enclosure 2.
- b. NEPA Documentation Requirements: NEPA documentation, including public notice for 30 days (see Enclosure 2), as proposals for deauthorizing authorized projects are legislative proposals and, per 40 CFR 1508.18, legislative proposals are a major federal action requiring NEPA compliance.

- (1) The expectation is a short, concise EA, that includes a summary of potential effects to resources at the project area will generally be sufficient to support a Finding of No Significant Impact (FONSI) for projects meeting the criteria in paragraph 3 absent unusual circumstances.

- (2) Not required within this NEPA documentation is the collection of quantitative environmental data since USACE has not operated nor maintained such projects in some time (if ever) and there is no expected change from the existing condition. As a result, a Fish and Wildlife Coordination Act Report should generally not be required. The basis for determining compliance with the applicable requirements of environmental and cultural resource laws should be documented in the EA/FONSI.

- (3) If a case-specific NEPA analysis of the potential deauthorization of a project finds special circumstances that do not support the use of an EA/FONSI, then the district should prepare an environmental impact statement through the normal disposition process.

- c. Process.

- (1) District develops a draft determination of the current federal interest in the subject project.

- (2) District develops a draft EA/FONSI.

- (3) Package undergoes District Quality Control (DQC) review.

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(4) District publishes public notice making the draft federal interest determination, draft EA/FONSI, and other documents available for a 30-day public comment period.

(5) District documents the comments received and their response to comments in the final integrated report/ EA.

(6) District routes recommendation through their internal review chain as they deem appropriate for approval/signature.

(7) District forwards signed package to major subordinate command (MSC) for review/submittal to Headquarters USACE (HQUSACE) Navigation (CECW-CO-N) utilizing standard cover memo format.

(8)HQUSACE Navigation reviews package and prepares Director's Report for routing and Director of Civil Works (DCW) signature.

(9) HQUSACE reviews package (Navigation, Counsel, Planning, Real Estate, Future Directions, Engineering and Construction and Programs Integration Division). Package is recommended for approval by DCW.

(10) HQUSACE may combine several reports into a batch report prior to routing to DCW (if desired/applicable).

(11) HQUSACE (DCW) transmits approved Director's Report to the Assistant Secretary of the Army for Civil Works. Concurrently, HQUSACE (Future Directions) transmits a copy of the approved Director's Report to Congress.

5. USACE Navigation is the proponent for this Deauthorization memo. The point of contact is the Coastal Navigation Program Manager, Ms. Kate Skelton, (202) 309-4949 or katharine.c.skelton@usace.army.mil.

2 Encls

1. Decision Process
2. Report Template

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EDWARD E. BELK, JR. P.E.
Director of Civil Works

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Enclosure 1
DECISION PROCESS

1. Does the federal navigation channel have any commercial traffic? (If yes, do not proceed. Recommending deauthorization is not an appropriate option).
2. Is the channel used for its authorized purpose? (If yes, do not proceed. Recommending deauthorization is not an appropriate option).
3. Does the channel have any national security needs or purposes? (If yes, do not proceed. Recommending deauthorization is not an appropriate option).
 - a. For a list of national strategic ports, utilize the information produced by the National Port Readiness Network.
 - b. To ensure the U.S. Coast Guard and the Department of Defense do not have facilities that we are unaware of on our lesser used channels, coordinate with the following:
 - i. USACE liaison (LNO) to the U.S. Coast Guard
 - ii. USACE liaison (LNO) to the Office of the Secretary of Defense
 - c. Also, to ensure other agencies do not have facilities that we are unaware of on our lesser used channels, for the public review period please ensure the public notice is sent to the following:
 - i. US Department of Agriculture's Agricultural Marketing Service
 - ii. Office of the Secretary of Energy
 - iii. U.S. Department of Transportation Office of Policy for the Secretary of Transportation
4. Does the federal navigation channel have any structures or improvements? (If yes, do not proceed using this process).
5. Are there any project lands owned by the United States in Fee? (If yes, do not proceed using this process. Off-ramp to Real Estate).
6. Is there any substantial motorized recreational vessel traffic? (If yes, do not proceed. Cease consideration of deauthorization using this process).
 - a. Substantial is defined as an amount of traffic that, without continued maintenance of the Federal channel, a local community dependent on that traffic would suffer catastrophic economic impacts.
 - b. Continued maintenance of the Federal channel includes periodic dredging to maintain authorized depths and/or periodic channel surveys essential for life and safety.
7. Is there any known controversy surrounding the potential deauthorization of the channel? (If yes, do not proceed using this process).
8. Are there any significant impacts to the environment with the deauthorization of the channel? (If yes, do not proceed using this process).

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Enclosure 2
INTEGRATED REPORT/EA TEMPLATE

1. Documentation purpose and need (satisfy NEPA requirements; to establish whether a federal interest continues to exist for commercial navigation, and if not, to recommend deauthorization of the channel)
2. Project Description
 - a. Original Project Purpose
 - b. Project Authorization (e.g. law citation, timeframe)
 - c. Project Location (nearest town, state/commonwealth) and U.S. Congress Representative and Senators
3. Project History
 - a. Year/timeframe last used for commercial navigation. Historic analysis not required, just documentation of any notable/major historic use.
 - b. Year/timeframe last dredged by USACE. Reason for ceasing of dredging maintenance.
4. General description of existing known resources or conditions found in the project area and may include plant community, fish and wildlife, threatened and endangered species, and cultural resources.
 - a. Describe any likely impacts to these resources from deauthorization of the channel and its reuse. Describe using direct, indirect and cumulative impact terms.
5. Alternatives description (remains a federal project or is deauthorized).
 - a. The minimum alternatives considered should include the No Action (which is required by NEPA) and the proposed action of deauthorization.
 - b. This is a qualitative analysis with no quantitative environmental data collection. The no action alternative allows the project to continue as an unmaintained and inactive water resources project.
 - c. Generally, there cannot be economical or commercial value associated with a project in which the Federal Government did not acquire real property interest or construct any physical structures or improvements.
6. Recommended plan (e.g. recommend deauthorization or not)

Considerations to document:

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- a. National security needs or purposes (if there are any, recommending deauthorization is inappropriate)
 - b. Safety concerns
 - c. Any proposed development activity
 - d. Any existing economic activity (local or national) at/within the vicinity of the site substantially reliant upon the channel – qualitative only
 - e. Any local uses or needs of the channel (e.g. is it within a harbor of refuge?)
 - f. Future uses or needs of the channel
 - g. NOAA navigational charts indicating active usage of the channel
 - h. Federal, Tribal or state entities or other parties interested in maintaining or acquiring the channel
 - i. Statement that there are no quantifiable National Economic Development benefits
 - j. Existing recreational use of channel, if any
 - k. Public/stakeholder/political concerns with deauthorization recommendation
 - l. Any nearby national parks
 - m. Any potential environmental benefits from maintaining the channel (e.g. flushing) or not maintaining the channel.
 - n. Nearby existing infrastructure and facilities
 - o. Any recreational traffic displaced to a commercial harbor as a result of deauthorization
 - p. (Only if suspected) whether Congress originally authorized a channel design that was different than the Chief's recommendation, and if so, if the channel could be authorized using the Chief's recommendation would the channel be used. If so, recommend off-ramping to a different type of process/study
 - q. Qualitative environmental or cultural descriptions of known resources and potential impacts.
 - r. Project Real property holdings, owners, and recommendation on disposal, retention, and associated costs.
7. Copy of Public Notice and comments received with USACE responses.
8. Supporting documents:
- a. FONSI
 - b. Table of summary of potential effects of the recommended plan – check box only (no further description/explanation needed as all boxes are

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- c. Consideration of NEPA and CERCLA requirements for disposal of real property.
- d. DQC
- e. Cover memo from district thru division to HQUSACE Navigation (CECW-CO-N)

It is assumed that there is no opportunity for a stakeholder to take ownership of government-owned improvements (structures) or real property associated with this project as there are none.

Not required:

- 1. Agency Technical Review
- 2. Cost certification
- 3. Tentatively Selected Plan meeting/determination
- 4. Quantitative economic evaluation
- 5. Quantitative environmental analysis
- 6. Real Estate evaluation
- 7. Executive summary
- 8. List of acronyms
- 9. List of Tables
- 10. List of Figures
- 11. National Economic Development benefits (if any benefits discovered, the project is still in the federal interest and deauthorization should not be recommended)
- 12. Quantitative data collection to form the summary description of physical environment for either alternative (e.g. climate, geology/topography, bathymetry, ice conditions, soils/sediments, water quality, air quality, noise, currents/tides/circulation/surface water stream flow, biological resources, terrestrial habitat, vegetation, birds, terrestrial mammals, freshwater fish, marine habitat, vegetation, marine fish, marine mammals, marine invertebrates, federal and state threatened and endangered species, special aquatic sites, essential fish habitat, cultural resources, population and demographics, employment and income, cultural and subsistence activities, etc.)