

(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 3—COAST GUARD AREAS, DISTRICTS, SECTORS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES**

**Subpart 3.01—General Provisions**

Sec.

3.01-1 General description.

3.01-5 Assignment of functions.

**Subpart 3.04—Coast Guard Areas**

3.04-1 Atlantic Area.

3.04-3 Pacific Area.

**Subpart 3.05—First Coast Guard District**

3.05-1 First district.

3.05-10 Sector Boston Marine Inspection Zone and Captain of the Port Zone.