

**TRADITIONAL NAVIGABLE WATERWAYS (TNWs) IN THE BUFFALO DISTRICT
APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers**

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): August 24, 2010

B. BACKGROUND INFORMATION: As stated in Appendix D of the US Army Corps of Engineers (Corps) Jurisdictional Determination Form Instructional Guidebook: “when determining whether a water body qualifies as a “traditionally navigable water (TNW)” relevant considerations include whether a Corps District has determined that the water body is a navigable water of the United States pursuant to 33 C.F.R § 329.14, or the water body qualifies as a navigable water of the United States under any of the tests set forth in 33 C.F.R. § 329, or a federal court has determined that the water body is navigable-in-fact under federal law for any purpose, or the water body is “navigable-in-fact” under the standards that have been used by the federal courts. In addition, Appendix D affirms that EPA and the Corps will continue to assert jurisdiction over “[a]ll waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.” 33 C.F.R. § 328.3(a)(1); 40 C.F.R. § 230.3(s)(1).

The following provides the rationale and supporting documentation for TNW designation pursuant to Appendix D for the subject water body occurring within the Buffalo District’s regulatory boundaries in the states of New York and Ohio. Posting of this jurisdictional determination establishes Corps jurisdiction over this TNW under Section 404 of the Clean Water Act. The Buffalo District reserves the right to revise this determination at anytime as additional information warrants. The Buffalo District has determined that a site/project specific jurisdictional determination involving this TNW is not required as a TNW designation has already been completed. This and other approved jurisdictional determinations for TNWs are posted on the Buffalo District’s regulatory website at <http://www.lrb.usace.army.mil/regulatory/jd.htm>. In addition, the current list of TNWs, including extent of each designation, occurring within the geographic limits of the Buffalo District may also be found on the Buffalo District’s regulatory website at <http://www.lrb.usace.army.mil/regulatory/NavWatersNY.htm> and <http://www.lrb.usace.army.mil/regulatory/NavWatersOH.htm>.

C. TNW/LOCATION

TNW: Cattaraugus Creek

State: New York

County(ies): Erie, Cattaraugus, and Chautauqua Municipalities: Ashford, Collins, Otto, East Otto,

Persia, Gowanda, Perrysburg, Hanover, Brant, as well as the Cattaraugus Indian Reservation

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office (Desk) Determination. Date: August 16, 2010

USACE File # 2004-00808 and 2009-00913

Field Determination. Date(s):

Project Manager: Amy Bartlett

SUMMARY OF FINDINGS

CWA SECTION 404 DETERMINATION OF JURISDICTION.

The subject water body is a “*water of the U.S.*” under Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328).

- a. **Limits (boundaries) of TNW designation:** Cattaraugus Creek is navigable-in-fact from the west of Village of Springville, NY (dam located in between Scoby Hill Road and Route 219) to its confluence with Lake Erie. The extent of the TNW described herein is depicted on the attached figure.
- b. **Rationale supporting determination:** This determination is based on the review and compilation of published information, reports/studies, and field observations to characterize the historical, present and/or potential use of this water body for navigation, including consideration of its use or potential susceptibility to use in interstate and foreign commerce. During this process the following information was documented:
 1. The physical characteristics, including its depth and size, indicate that the waterbody has the capacity to be navigated by watercraft.
 - i. Cattaraugus Creek has a drainage area of approximately 280 square miles and flows directly into Lake Erie (a Section 10 TNW and Great Lake). It is a named stream represented by a solid line on the USGS Quad map. There are approximately 34 miles of stream from the mouth until the dam in Springville, NY. Cattaraugus Creek is deep enough to support rafting and other small craft such as canoes throughout much of the year. The stream is known to have Class II though IV rapids.
 2. The waterbody is currently and was historically used for activities involving navigation and interstate commerce, such as recreational commercial navigation.
 - i. Numerous segments of Cattaraugus Creek are listed by the National Parks Service on the Nationwide River Inventory (NRI). The NRI indicates that one of the reasons if for recreation (Class II through IV rapids). Numerous outfitters and tour guide companies offer rafting trips on Cattaraugus Creek (see data sources below for websites/companies).
 - ii. The New York State Department of Environmental Conservation’s webpage provides a short history of Zoar Valley Multiple Use Area, which encompasses part of Cattaraugus Creek. Their webpage states that “At least two sawmills were located in the area. Historic reports indicate that logs and produce were moved along Cattaraugus Creek. Trees that were of saw log quality that were located near the river, or that could be easily pulled to the river, would have been logged during past sawmill operations.” This supports Cattaraugus Creek’s use historically in commerce. Although it has been noted that the navigability is currently limited in the Cattaraugus Creek Indian Reservation, if access were available, this section to the mouth would be navigable-in-fact.

- iii. Catt Rafting Adventures, a rafting outfitter/guide company, indicates on their webpage that they have a special rafting trip for their Canadian customers supporting Cattaraugus Creeks' use in foreign commerce. In addition correspondence from Mr. Dave Schall of Catt Rafting Adventures states that they receive many out-of-state and Canadian customers.
- iv. Cattaraugus Creek Outfitters, a fly fishing company, offers steelhead fishing trips twice a year in spring and fall. Testimonials from past trip participants on their webpage include people from Toronto, Canada and New Jersey supporting interstate and foreign commerce. In addition, they offer fly fishing lessons and other fishing trips on Cattaraugus Creek.
- v. Numerous public access points are located along Cattaraugus Creek as indicated by Mr. Dave Schall of Catt Rafting Adventures.

Conclusion: Collectively, the above discussed factors demonstrate that Cattaraugus Creek is navigable-in-fact, resulting in its designation as a TNW for purposes of CWA jurisdictional determinations and currently and historically used in interstate or foreign commerce associated with commercial recreational navigation activities. This determination establishes Corps jurisdiction over this water body as a TNW under Section 404 of the Clean Water Act, pursuant to 33 C.F.R. Part 328.3(a)(1).

DATA SOURCES.

SUPPORTING DATA. Data reviewed for JD (check all that apply):

- Data sheets prepared by the Corps:
- Corps navigable waters' study:.
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Collins Center Quad
- USDA Natural Resources Conservation Service Soil Survey. Citation:
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Bing maps and Google maps online
or Other (Name & Date):
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):
 - **Correspondence from Mr. Dave Schall of Catt Rafting Adventures and from a representative of Adventure Calls Outfitters, Inc.**
 - <http://www.dec.ny.gov/lands/36931.html>
 - <http://www.adventure-calls.com/rafting.html>
 - <http://www.americanwhitewater.org/content/River/detail/id/1277>
 - <http://www.nvsparks.state.nv.us/recreation/boating/launch-sites.aspx>
 - <http://catraftingadventures.com/id25.html>
 - http://rafting.allaboutrivers.com/New_York_river_rafting/Cattaraugus_Creek_rafting-riv244.html
 - <http://www.nps.gov/ncrc/programs/rtca/nri/states/nv.html>
 - <http://www.zoarvalley.org/home.html>