

WORKING DRAFT – FOR DISCUSSION PURPOSES ONLY.

Non Assumable Water per 404 (g)(1)	Limit	Proposed Source
<p>Waters subject to the ebb and flow of tide (incl. Pacific Ocean)</p> <p>Tidegates, levees and other tide limiting structures: Assume that head or reach of tide is at the structure unless there is site-specific information to the contrary?)</p>	<p>Longitudinally: head of tide</p>	<p>“Heads of Tide for Coastal Streams in Oregon”, DSL, March 1989; and mapped: GIS shapefile from Oregon Coastal Atlas</p> <p>“Tidegates in Oregon Estuaries” OCOMP 2011 - shapefile</p> <p><i>[Limitation: These sources do not include Columbia R. tributaries. DSL’s inventory incomplete for some coastal waters]</i></p>
	<p>Latitudinally: Mean higher high water</p>	<p>Standard tools: Nearest tidal station data On-site tidal gage Field indicators</p>
<p>Waters currently used for interstate/foreign commerce</p>	<p>Longitudinally: established navigational limit</p>	<p>“Navigable Riverways Within the State of Oregon” and “Navigable Harbors and Bays Within the State of Oregon”, October 1993; and DSL generated shapefiles, 2012.</p>
	<p>Latitudinally: Ordinary high water</p>	<p>Standard tools: Local gage data Field indicators Direct observation Corps published elevations for Columbia R. and Willamette R.</p>
<p>Waters susceptible to use interstate/foreign commerce (either in natural condition or w/reasonable improvement)</p>	<p>To be determined as such waters may be identified by the Corps in future.</p>	
<p>Wetlands adjacent to navigable and tidal waters</p>	<p><u>Option 1</u>: Wetland polygons located, in part or whole, within 100-year floodplain</p>	<p>Most current FEMA flood plain maps – Zone A.</p>
	<p><u>Option 2</u>: Wetland polygons located, in part or whole, within some fixed distance perpendicular to the OHW/MHHW of the non-assumable waterway.</p>	<p>Standard linear measurement for each waterway.</p>
	<p>Other options may come forward.</p>	

A memorandum with Corps defining non-assumable waters (and associated mapping) would need to be periodically amended to account for changes such as: newly declared federally navigable waters, removal or placement of tide-limiting structures, federal identification of other waters susceptible to use for commerce in their natural condition or with reasonable improvement.

New Jersey MOA with Corps North Atlantic District defining non-assumable waters:

- 404(g)(1) is quoted verbatim
- “Adjacent wetlands” defined as: wetlands partially or totally within 1,000 feet of OHW or MHW. Line drawn parallel with the river/waterbody.
- Tidal waters are defined using head of tide maps.
- Non-assumed waters specifically identified as:
 - Full length of Delaware R.
 - Tidal water bodies to the head of tide
 - Greenwood Lake
 - Any waterway served by an existing or proposed federal navigation project – Corps district to provide list of those projects and updates as necessary
- Modification process identified for future navigability determinations by fed.

Michigan MOA with North Central District defining non-assumable waters::

- 404(g)(1) is quoted verbatim.
- Reference to appendix for list of navigable waters
- Waterways in the appendix are specified as “navigable throughout” or from mouth to a specified point.
- List additionally states that “All federal navigation projects are navigable waters of the U.S. to upstream and/or landward limit of project”.