



US Army Corps  
of Engineers

**Detroit District**

# Public Notice

In Reply Refer To: Corps File No. LRE-2021-00012-64

Date: June 21, 2022

Expires: July 20, 2022

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## **Extension of Comment Period for Menominee River Navigability Study Request for Comments and Information**

We have elected to extend the comment period for the public notice an additional 30 days. Details on the study and information on how to submit comments are in the attached public notice.

FOR THE DISTRICT ENGINEER:

Charles M. Simon  
Chief, Regulatory Branch  
Operations Office

### NOTICE TO POSTMASTERS:

We request that the above notice be conspicuously and continuously posted for the time period of this notice.



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# Public Notice

In Reply Refer To: Corps File No. LRE-2021-00012-64

Date: May 20, 2022  
Expires: June 20, 2022

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## **MENOMINEE RIVER NAVIGABILITY STUDY REQUEST FOR COMMENTS AND INFORMATION**

In accordance with U.S. Army Corps of Engineers (Corps) regulations at 33 CFR § 329.14, Determination of navigability, the Detroit District Regulatory Branch (Detroit District) has initiated a navigability study of the Menominee River (Michigan and Wisconsin sides) and its major Michigan tributaries. The study area includes all waters evaluated in the Detroit District draft 1979 navigability study (see below) which did not include any Wisconsin tributaries beyond the main channel of the Menominee River. The study area is identified on the attached map.

**Purpose:** The purpose of this notice is to solicit comments from the public; federal, state, and local agencies and officials; tribes; and other interested parties regarding the past use, present-day use, and susceptibility for use of the Menominee River (Michigan and Wisconsin sides) and its major Michigan tributaries to transport interstate or foreign commerce.

**Location:** The Menominee River's entire 114.6-mile course forms part of the boundary between the States of Michigan and Wisconsin. The river empties into Lake Michigan between Marinette, Wisconsin and Menominee, Michigan. See attached map.

### **Background:**

Statute – Under Section 10 of the Rivers and Harbors Act of 1899, (Section 10), a Department of the Army permit is required for activities involving structures or work in or affecting navigable waters of the United States (33 USC 403 and 33 CFR § 322). The Detroit District, which is part of the Great Lakes and Ohio River Division, presently exercises Section 10 regulatory authority on the Michigan side of the Menominee River up to river mile 1.86. The St. Paul District, which is part of the Mississippi Valley Division, presently exercises Section 10 regulatory authority on the Wisconsin side of the Menominee River up to river mile 2.5. The Corps will use the navigability determination that is currently being undertaken to confirm or redesignate the upstream extent of the Corps Section 10 jurisdiction.

Regulations – The Corps' definition of "navigable waters of the United States", includes "those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or

foreign commerce.” A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity (33 CFR § 329.4).

The Corps’ regulation at 33 CFR § 329.6(a) states in part that, “The types of commercial use of a waterway are extremely varied and will depend on the character of the region, its products, and the difficulties or dangers of navigation. It is the waterway’s capability of use by the public for purposes of transportation of commerce which is the determinative factor, and not the time, extent, or manner of that use... Similarly, the particular items of commerce may vary widely, depending again on the region and period.”

The Corps’ navigability determinations are not limited to the natural or original condition of a waterbody (33 CFR § 329.8). “Navigability may also be found where artificial aids have been or may be used to make the waterbody suitable for use in navigation” (33 CFR § 329.8). “A waterbody may also be considered navigable depending on the feasibility of use to transport interstate commerce after the construction of whatever ‘reasonable’ improvements may potentially be made”, even if the improvement does not exist, is not planned, nor even authorized (33 CFR § 329.8(b)). A stream may be navigable “despite the existence of falls, rapids, sand bars, bridges, portages, shifting currents, or similar obstructions” (33 CFR § 329.10).

Past Use – A draft 1979 Menominee River navigability study contracted by the Detroit District documented that the entire reach of the Menominee River (to confluence of the Brule and Michigamme Rivers at mile 114.6) and portions of 17 of its Michigan tributaries were used by the pre-1900 timber industry to float logs to downstream mills. Lumber from the mills was sold for use in other states. At the time of the draft study, the upstream limit of the Detroit District’s regulatory authority relative to navigable waters of the U.S. and the head of navigation on the Menominee River extended to river mile 1.86 (i.e., distance upstream from the mouth of the river).

Present Day Use and Potential for Future Use – The 1979 draft study noted “[t]he potential of the Menominee River for interstate commercial use above the extent of the current Army Corps of Engineers jurisdiction appears to be limited.” The Detroit District intends to review information on present-day use and the potential for future transport of interstate or foreign commerce with reasonable improvements on the Menominee River (Michigan and Wisconsin sides) and its major Michigan tributaries. This information will be used, along with the information in the draft 1979 study and any additional historical information, to complete the navigability study.

Study Area – The area of interest for the navigability study includes the entire reach of the Menominee River within the Michigan counties of Dickinson, Iron, and Menominee as well as within the Wisconsin counties of Florence and Marinette (see attached map).

The Michigan tributaries listed below are within the Michigan counties of Baraga, Dickinson, Gogebic, Iron, Marquette, and Menominee.

The Brule River, a tributary to the Menominee River, also forms part of the boundary between the States of Michigan and Wisconsin and is within the Wisconsin counties of Florence and Forest.

The Michigan waterways being studied for this navigability study include:

- a. Menominee River
- b. Brule River
- c. Michigamme River
- d. Iron River
- e. Paint River
- f. North Branch Paint River
- g. South Branch Paint River
- h. Net River
- i. Peshekee River
- j. West Branch Peshekee River
- k. Deer River
- l. Fence River
- m. East Branch Fence River
- n. West Branch Fence River
- o. Sturgeon River
- p. East Branch Sturgeon River
- q. West Branch Sturgeon River
- r. Pemene Creek

Please note that the locations indicated on the attached map for the upstream river limits are approximate.

Navigability Determination – Once the navigability study is complete, the Detroit District will prepare a report of findings and submit a recommendation to the Great Lakes & Ohio River Division Engineer. The Great Lakes & Ohio River Division Engineer, in coordination with the Mississippi Valley Division Engineer, will determine the portion(s) of the Menominee River (Michigan and Wisconsin sides) and its major Michigan tributaries that are “navigable waters of the United States” (33 CFR § 329.14 and 33 CFR § 329.4).

**Federal Authority:** 33 U.S.C. 401 et seq; 33 CFR § 322 et seq; 33 CFR § 329 et seq.

**Comments:** Detroit District is especially interested in comments and information regarding the present use, or susceptibility for use of the Menominee River (Michigan and Wisconsin sides) and its major Michigan tributaries in their natural condition or by reasonable improvement, as a means to transport interstate or foreign commerce upstream of river mile 1.86. Information and comments regarding the past use of the river and tributaries for interstate or foreign commerce will also be accepted and considered. Comments may be submitted by email (preferred method), or in writing and postmarked or delivered by the expiration date of this public notice. All comments must refer to file number LRE-2021-00012-64. We will interpret a lack of response as meaning that there is no comment to the navigability study.

Comments should be filed with:

Laura A. Garrett  
Regulatory Project Manager  
Compliance & Enforcement Section  
Corps of Engineers, Detroit District  
477 Michigan Avenue  
Detroit, Michigan 48226-2550

Comments may be e-mailed to: [Laura.A.Garrett@usace.army.mil](mailto:Laura.A.Garrett@usace.army.mil), but must include a name and mailing address.

**Additional Information:** This public notice and map are also available for viewing/printing at: <https://www.lre.usace.army.mil/Missions/Regulatory-Program-and-Permits/Public-Notices/>. Questions concerning this notice may be directed to Laura Garrett at the address listed above, or telephone number (313) 226-1327.

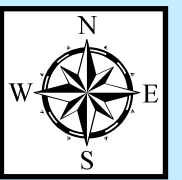
FOR THE DISTRICT ENGINEER:

Charles M. Simon  
Chief, Regulatory Branch  
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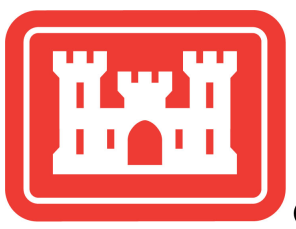




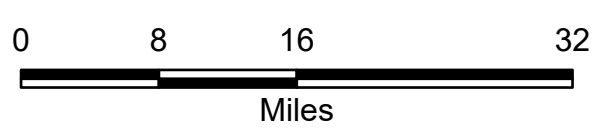
**Legend**

- ◆ Upstream Limit of Review Area
- ★ Current Section 10 Jurisdiction Limit (Detroit District to river mile 1.86; St. Paul District to river mile 2.5)
- ▭ County Boundary

Esri Canada, Esri, HERE, Garmin, USGS, NGA, EPA, USDA, NPS



**LRE-2021-00012-64 Menominee River Navigability Study Area**



Map Center: 88.375781°W 46.117219°N

**All Upstream Limit of Review Areas displayed on the map are approximate**