

“3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:

- a. Which are or could be used by interstate or foreign travelers for recreational or other purposes; or*
- b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or*
- c. Which are used or could be used for industrial purposes by industries in interstate commerce;*

4. All impoundments of waters otherwise defined as waters of the United States under this definition;”

Historically, open waters (e.g. lakes, ponds, and impoundments) were considered “*deepwater aquatic habitats*” in the USACE 1987 Wetland Delineation Manual (1987 Manual). The jurisdictional nature of open waters is therefore evaluated during all AR delineations. The 1987 Manual states the following regarding deepwater aquatic habitats:

“a. Definition. Deepwater aquatic habitats are areas that are permanently inundated at mean annual water depths >6.6 ft or permanently inundated areas >6.6 ft in depth that do not support rooted-emergent or woody plant species.

b. Diagnostic environmental characteristics. Deepwater aquatic habitats have the following diagnostic environmental characteristics:

(1) Vegetation. No rooted-emergent or woody plant species are present in these permanently inundated areas.

(2) Soil. The substrate technically is not defined as a soil if the mean water depth is >6.6 ft or if it will not support rooted emergent or woody plants.”

TTL did not observe open water features within the review area.

4.6 Jurisdictional Determination Request

Any person, firm, or agency (including Federal, state, and local government agencies) planning to work in WOTUS, or discharge (dump, place, deposit) dredged or fill material in WOTUS, must first obtain a permit from the USACE. Recently, the definition of regulated WOTUS has been re-evaluated by the USACE and other federal agencies to better define what water bodies may be considered jurisdictional under the Federal Clean Water Act (CWA). Traditionally navigable waters, relatively permanent tributaries of navigable waters, and wetlands that abut these features are considered jurisdictional under the CWA and require that a permit be obtained prior to commencing alterations. In light of recent studies and court rulings, the USACE may also assert jurisdiction for less-permanent tributaries, headwaters and adjacent wetlands that connect to downstream permanent waters. Additionally, the USACE has the authority to apply a “significant nexus standard” to assert jurisdiction for water features which do not necessarily have a surface connection to downstream waters. The significant nexus