

CHAPTER 22. WILD AND SCENIC RIVERS

1. INTRODUCTION AND DEFINITIONS.

a. **General.** "Wild and scenic rivers" are those rivers having remarkable scenic, recreational, geologic, fish, wildlife, historic, or cultural values. Federal land management agencies in the Departments of the Interior and Agriculture manage the Wild and Scenic Rivers Act (Act).¹ The National Park Service (NPS) has the primary role in maintaining the National Rivers Inventory discussed in section 1.b. of this chapter. The Wild and Scenic Rivers "program" is more commonly referred to as the "National Wild and Scenic Rivers System" (WSRS).

b. **The National Wild and Scenic Rivers System (WSRS).** This is a list of rivers the Secretaries of the Interior or Agriculture have determined have the special values mentioned above. The primary purpose of the WSRS is to protect the rivers' free-flowing characteristics. Toward that end, the Federal Energy Regulatory Commission cannot license activities that affect the free-flowing nature of these rivers. Further, other Federal agencies, like FAA, may not assist, by loan, grant, or license or other authorizations, a water resources action that would have a direct or adverse effect on the values for which the river was designed. As a result, FAA must analyze the adverse effects a proposed water resources action may have on the free-flowing nature of these rivers or their natural, cultural, or recreational values. This chapter discusses how to examine an action's potential impacts on river segments designated or eligible to be included in the WSRS.

c. **The National Rivers Inventory (NRI).** The NRI lists more than 3,400 free-flowing river segments having at least one outstanding scenic, natural or cultural feature. It also provides information on statewide river assessments or Federal agencies involved in those assessments. Listing on the NRI means the Federal government is protecting these rivers and streams while agencies are considering the river for designation to the WSRS. The NPS, through The Rivers and Trails Conservation Assistance Program, maintains the NRI.

d. **Water resource action.** This definition includes construction or development that would affect the free-flowing characteristics of a Wild and Scenic River or a Study River.

e. **Study river area.** This is a river and the bordering area (located within a ¼-mile-area of the ordinary high watermark on each side of the river) designated for study or

¹ The Department of the Interior agencies are: the National Park Service, the Bureau of Land Management, and the U.S. Fish and Wildlife Service. The Department of Agriculture agency is the U.S. Forest Service. This chapter refers to these agencies as "managing agencies."

potential addition to the WSRS.² The corridor is established to protect the free-flowing nature, water quality, and outstandingly remarkable values of a river.³ Evaluation of the study area is needed to determine if the river has the characteristics that qualify it for inclusion in the WSRS.

Note: The corridor could be wider if needed to protect the resource.

f. Free-flowing characteristics. These are the existing or natural flowing conditions of a river in the WSRS or NRI. Typically, these natural flows exist because no diversions, impoundments, or rip-rap have been installed nor has man altered the waterway’s natural course.

2. APPLICABLE STATUTES AND IMPLEMENTING REGULATIONS.

APPLICABLE STATUTES AND IMPLEMENTING REGULATIONS	SUMMARY DESCRIPTION	OVERSIGHT AGENCY
The Wild and Scenic Rivers Act of 1968, 16 USC 1271-1287	This Act: <ul style="list-style-type: none"> • selects certain rivers of the nation having remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values; • preserves the rivers’ free-flowing conditions and protects the areas in their immediate areas; and • strives to balance river development with permanent protection of the country’s most outstanding free-flowing rivers. 	Department of the Interior (National Park Service (NPS); U.S. Fish and Wildlife Service (FWS); or Bureau of Land Management (BLM) and The Department of Agriculture (U.S. Forest Service (USFS).
36 CFR, Part 297, Subpart A, Water Resources Actions	Regulations here apply to Federal assistance used in building water resources actions that affect the Wild and Scenic Rivers System or Study Rivers the Secretary of Agriculture manages in whole or in part.	NPS, FWS, BLM, and USFS

² Title 16 USC, Section 1275.(d). As a policy matter, we have decided to use the ¼-mile standard noted in Section 1275.(d) for study rivers as the limit of our impact analysis for both WSRS and NRI rivers. This will ensure we properly assess potential impacts on these important river reaches.

³ Source: 36 CFR Part 297.3(c) and the Interagency Wild & Scenic Rivers Council.

<p>Presidential Memorandum to the Heads of Departments and Agencies on National Rivers Inventory, dated August 2, 1979</p>	<p>Underscores the need to strengthen the WSRS by directing Federal agencies to set an example of sound management for State, local and private landowners. To do so, Federal agencies are to take an aggressive role in protecting Wild and Scenic Rivers flowing through public lands. These agency efforts include all rivers and segments listed in the NRI.</p>	<p>FAA</p>
<p><i>Wild and Scenic River Guidelines for Eligibility, Classification and Management of River Areas</i>, dated 47 Federal Register (FR) 39454, dated September 7, 1982</p>	<p>This document provides information on determining if a stream or river has the characteristics that would qualify it for designation.</p>	<p>Departments of the Interior and Agriculture</p>
<p><i>CEQ Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers of the Nationwide Inventory</i>, dated, 45 FR 59190, dated September 8, 1980</p>	<p>CEQ issued this guidance because development outpaces the Federal government's ability to protect rivers having characteristics qualifying them for the WSRS. Failure to assess and avoid effects could foreclose a river's eligibility for that System. Therefore, Federal agencies must:</p> <ul style="list-style-type: none"> • determine if their actions would adversely affect the characteristics of an NRI river that would qualify it for the System; and. • study and develop reasonable alternatives that would avoid or mitigate impacts. 	<p>CEQ</p>

3. APPLICABILITY TO AIRPORT DEVELOPMENT ACTIONS. The environmental analysis of a proposed airport action that involves a water resource action (see section 1.d of this chapter) that may affect a WSRS or NRI river must include discussions of potential impacts to the river. Typical airport actions that could result in impacts to these rivers include: airfield/landside expansion into a river (new or expanded terminal and hangar facilities, new or extended runways and taxiways, navigational aids [NAVAIDS], etc.); land acquisition for aviation-related use, new or relocated access roadways, remote parking facilities, and rental car lots; or a significant increase or change in aircraft operations.

4. PERMITS, CERTIFICATIONS, AND APPROVALS.

a. Notifying the appropriate agency. Before approving a water resource action on or adjacent to a WSRS river and a river that Congress designated for study, the responsible FAA official must ensure the sponsor obtains a Section 7 Consent Determination (see section 4.b of this chapter). No less than 60 days before FAA makes a decision on a water resources action, the responsible FAA official must send a notice to the Secretary of Agriculture about

FAA's intent to approve the proposed action. FAA's notice must contain the following information per 36 CFR Section 297.4:

- (1) action name and location;
- (2) name of the affected river;
- (3) the nature of FAA's authorization (e.g., an unconditional ALP approval);
- (4) a description of the proposed action; and
- (5) any relevant information such as plans, maps, and environmental analyses.

b. Section 7 Consent Determination. When a water resources action involves a WSRS river, the responsible FAA official must ensure the airport sponsor obtains a Section 7 Determination from the Secretary of Agriculture (36 CFR Section 297.5). The Secretary will not consent to the proposed water resources action, if that action would:

(1) directly or adversely affect the values for which a Wild and Scenic River or Study River was designated when any part of the water resource action is within the river's boundaries;

(2) invade or unreasonably diminish the scenic, recreational, and fish or wildlife values of the Wild and Scenic River if any portion of the water resource action is located above, below, or outside this water body; or

(3) invade or diminish the scenic, recreational, and fish and wildlife values of a Study River if the water resource is located above, below, or outside the Study River during the study period.

c. Denial of a Section 7 Consent Determination. FAA may not approve the water resource action if the Secretary of Agriculture denies the Consent Determination. However, the Secretary may recommend measures to eliminate the adverse effects. FAA may encourage the airport sponsor to file revised plans based on those recommendations for further consideration.

5. ENVIRONMENTAL COMPLIANCE PROCEDURES - ENVIRONMENTAL ANALYSIS.

a. General. The Airport sponsor or responsible FAA official must determine if their proposed water resource action would occur near a designated WSRS River or Study River. The sponsor should consult the NPS, USFS, USFWS, or BLM. If this consultation indicates that the action is within ¼-mile from the ordinary high water mark on each side of a WSRS or NRI river (¼-mile boundary) the sponsor should notify the responsible FAA official. This ensures the FAA official or the sponsor completes the steps needed to comply with the Wild and Scenic Rivers Act in a timely manner. Although not required, FAA also recommends

considering impacts to rivers that may be eligible for a state program comparable to the Federal Wild and Scenic Rivers System. This helps to ensure the environmental process addresses water resource action impacts on those protected rivers.

b. Wild and Scenic and Congressionally-designated rivers. EAs or EISs prepared for proposed water resource actions that involve WSRS or Congressionally-designated rivers must summarize measures needed to avoid or reduce unavoidable, adverse effects on the river. Analyses should address water resource action impacts to the river or the corridor extending ¼-mile from the ordinary high water mark on each side of the affected river.

c. NRI rivers. EAs or EISs prepared that involve these rivers must address effects on these rivers as well. If an agency noted in section 5.a. determines the proposed water resource action could affect an NRI river, refer to CEQ's August 1980 *Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the National Inventory* and its attached *Guide for Identifying Potential Adverse Effects* for guidance. That publication states Federal agencies should study, develop, and describe reasonable alternatives before making a decision on a water resource action that could alter the characteristics that may qualify the river for the WSRS. Analyses should address water resource action impacts to the river or within its ¼-mile boundary.

Agencies must do so to avoid and mitigate adverse effects on those characteristics. The responsible FAA official should ensure consultation with the agency managing the river (i.e., USFS, FWS, NPS, or BLM) has occurred. The responsible FAA official should also ensure the managing agency receives the environmental document for review and comment. The EA or EIS should summarize important comments from the managing agency. It should cross-reference the appendix containing documentation of consultation and agency comment letters summarized in the body of the EA or EIS. A proposed water resource action on NRI rivers does not require a Section 7 Determination (see section 4.b. of this chapter).

6. DETERMINING IMPACTS.

a. General. As described in section 4.b. of this chapter, different levels of impact analysis must be conducted for Designated or Study rivers, depending on the proposed water resource action's location. If the proposed water resource action is within the ¼-mile boundaries of a WSRS or NRI river, an evaluation of action effects on the river is needed. The evaluation must determine if the action would directly or adversely affect the values cited for designation or study or that no part of the proposed water resource action is within the river or its ¼-mile boundaries. If the action is located within these boundaries an analysis is needed. That analysis must determine whether the water resource action would not invade or diminish the scenic, recreational, and fish or wildlife values of the Wild and Scenic river or a Study river.

b. The evaluation. As noted earlier, the EA or EIS must include documentation of agency coordination. That coordination may be needed to determine if any designated or

Study or NRI river is within the ¼-mile boundary noted in section 6.a of this chapter. If coordination suggests that a designated or eligible river is within that zone, the airport sponsor or responsible FAA official, as appropriate, should conduct an evaluation to determine if the proposed water resource action would adversely affect the river by:

- (1) destroying or altering the river's free-flowing nature;
- (2) introducing a visual, audible, or other type of intrusion that is out of character with the river or that would alter outstanding features of the river's setting;
- (3) causing the river's water quality to deteriorate; or
- (4) allowing the transfer or sale of property interests without restrictions needed to protect the river or its ¼-mile-wide boundaries.

7. DETERMINING IMPACT SIGNIFICANCE.

a. General. After completing the consultation and analyses discussed in other sections of this chapter, use the information in the following table to determine the severity of water resource action impacts on a protected river.

ORDER 1050.1E THRESHOLD	FACTORS TO CONSIDER
None.	None for determining a significant impact, since FAA does not have a threshold for this resource. Use information in section 6.b. of this chapter when determining if a water resource action would cause an adverse effect.

From: Table 7-1, FAA Order 5050.4B.

b. Mitigation. During the environmental review process, NPS, BLM, FWS, or USFS would normally provide letters addressing action effects on the affected river. Often, those letters include recommended measures to mitigate those effects. An appendix to the environmental document should include copies of those letters. The environmental document should summarize the most important information in those letters and accurately cross-reference the appendix and pages in that appendix for further information. If FAA or the sponsor does not adopt any recommended mitigation, the environmental document should clearly explain why the recommendation was not adopted.

8. ENVIRONMENTAL IMPACT STATEMENT CONTENT.

a. For Wild and Scenic or Study rivers. When consultation with NPS, BLM, USFWS, or USFS leads FAA to determine that water resource action would preclude the inclusion of a Study river in the WSRS, the responsible FAA official should invite one or more of those

agencies to be a cooperating agency. The Record of Decision must adopt suitable avoidance and mitigation measures and a monitoring and enforcement program.

b. For NRI rivers. If a water resource action requiring an EIS would adversely affect an NRI river, the responsible FAA official should request the agency managing the river be a cooperating agency. If that agency does not respond to such requests for support within 30 days, FAA may proceed, but is should use care to avoid or minimize significant effects on the NRI river.

c. Mitigation. The EIS should describe proposed mitigation when NPS, BLM, USFWS, or USFS provide that information. FAA should fully consider the mitigation and balance its benefits against those of the proposed water resource action. Explain why the sponsor or FAA did not adopt any mitigation agencies recommend. If feasible, provide an estimated schedule for undertaking accepted mitigation.