

Guidance on Wild & Scenic Rivers in North Carolina (1/27/03)



Purpose

This guidance is intended to assist the North Carolina Department of Transportation (NCDOT) in complying with the requirements of the Wild and Scenic Rivers Act (WSRA) and the 1979 Presidential Directive (regarding the Nationwide Rivers Inventory).

Rivers in North Carolina affected by the WSRA and/or the Presidential Directive

There are three lists to be aware of:

- Designated Wild & Scenic Rivers (WSR);
- Study rivers authorized by Congress (Section 5(a)); and
- Nationwide Rivers Inventory (NRI) (Section 5(d)(1)).

Wild & Scenic Rivers

North Carolina has the following WSR designations

- Chattooga River (USFS-administered)
- Horsepasture River (USFS-administered)
- Lumber River (state-administered)
- New River (state-administered)
- Wilson Creek (USFS-administered)

Study Rivers

Congressionally authorized study rivers are also protected under the WSRA as explained in the section titled “Compliance with the WSRA (Section 7).” There have been four congressionally authorized study rivers in North Carolina. Three have received final determinations. The remaining study river is the **Mills Fork of the French Broad River**. The USFS has made a suitability and eligibility determination for the Mills Fork; however, the President has not yet submitted this river to Congress for final determination.

Note: The USFS maintains a list of rivers in which they have made eligibility and suitability determinations. Rivers on this list are not afforded protection under the WSRA unless they happen also to be congressionally authorized study rivers.

Nationwide Rivers Inventory (NRI)

The NRI is a list (maintained by the National Park Service (NPS)) of potentially eligible river segments (see list for NC rivers at: <http://www.nps.gov/ncrc/programs/rtca/nri/states/nc.html>). The 1979 Presidential Directive (<http://www.nps.gov/ncrc/programs/rtca/nri/hist.html - pd>) and CEQ procedures (<http://www.nps.gov/ncrc/programs/rtca/nri/hist.html - ceg>) provide guidance for interagency consultation to avoid or mitigate adverse effects on NRI rivers.

WSR Boundaries

Each congressionally authorized WSR must have a legally established boundary. If a boundary has not yet been established, an interim boundary will be in effect, generally comprising “that area measured within ¼

mile from the ordinary high water mark on each side of the river.” The final boundary is limited to an area averaging up to 320 acres per river mile. State-administered rivers (Section 2(a)(ii)) may or may not include the establishment of lateral boundaries.

Notes:

- Contact the river-administering agency to obtain the boundaries.
- Boundaries for USFS-administered WSRs may be found in the relevant national forest plan.

Compliance with the WSRA (Section 7)

Federally assisted NCDOT construction projects determined to be “water resources projects” (e.g. bridge replacements) are subject to Section 7 of the WSRA. Section 7 determinations are made by the federal river-administering agency for federally-administered WSRs and by the NPS for state-administered WSRs. Evaluation standards vary by project location (i.e., within the bed/banks of a designated/congressionally authorized study river or within the bed/banks upstream, downstream or on a tributary to the river). The evaluation standards can be found in the document [*“Wild and Scenic Rivers Act: Section 7”*](#);

- **Within the bed/banks of a designated or congressionally authorized study river corridor**, the river-administering agency determines whether there are “direct and adverse effects” to the values (free-flowing condition, water quality and the outstandingly remarkable values). Any project that results in a “direct and adverse effect” on the values is prohibited. See **Appendix C** of the *“Wild and Scenic Rivers Act: Section 7”*;
- **Within the bed/banks upstream, downstream or on a stream tributary to a designated river corridor**, the river-administering agency determines whether the proposed project would “invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area” on the date of its designation. See **Appendix D** of the *“Wild and Scenic Rivers Act: Section 7”*; and
- **Within the bed/banks upstream, downstream or on a stream tributary to a congressionally authorized study river corridor**, the river-administering agency determines whether the proposed project would “invade the area or diminish the scenic, recreational, and fish and wildlife values present in the area” on the date of its authorization for study. Note: This standard provides greater protection during the shorter-term study process because “diminish” is not qualified by “unreasonably.” See **Appendix E** of the *“Wild and Scenic Rivers Act: Section 7”*.

In the analysis process, opportunities for improved design or a better location for a bridge may lessen its impacts on river resources and allow better connection of the river with its floodplain.

Coordination

The NCDOT should identify any proposed, federally assisted action having a foreseeable effect on a WSR or a congressionally authorized study river early in the planning process. NCDOT should begin to coordinate with the river-administering agency and other interested parties when such projects are identified. For each alternative under consideration, the environmental analysis will identify the potential effects on the natural, cultural and recreational values of the designated or study river. If any alternatives could adversely impact the values for which a river was designated, or foreclose options to designate a congressionally authorized study river, those alternatives cannot be selected, absent the elimination of adverse effects. The NEPA process will facilitate, but does not substitute for, a Section 7 determination by the river-administering agency. However, Section 7 consultation and determinations should occur within the umbrella of the project NEPA phase.

NPS’s role with respect to state-administered rivers

Although it is the responsibility of the State of North Carolina to serve as the river-administering agency for WSRs designated under Section 2(a)(ii) of the WSRA, the NPS retains responsibility for making the Section 7 determination, preferably in consultation with the State of North Carolina.

Types of activities likely to be exempt from Section 7 of the WSRA

The WSRA does not exempt any types of federally assisted or sponsored water resources projects from compliance. Neither the DOI nor USDA considers highway reconstruction, including replacement or

modification of bridges, to be maintenance. Maintenance projects such as painting, resurfacing, or replacement of superstructure or guardrails presumably do not involve construction in the bed/banks of a river and therefore are not water resources projects. It is also unlikely that bridge and roadway construction upstream, downstream or on tributaries of designated rivers will invade or unreasonably diminish the scenic, recreational, fish or wildlife values of the designated river, and they usually will not require a Section 7 determination by the river administrator. This is also for true for congressionally authorized study rivers except the standard is “diminish” rather than “unreasonably diminish.” The further the project is from the designated or study area the more likely this will be the case. Early consultation with the river administrator is advised.

Relative to the NRI, CEQ guidance states:

“...repair or rehabilitation of existing structures would not have a negative impact except if the action would result in significant expansion of the facility or if the construction process itself would cause an irreversible impact on the environment.”

Design changes required through Section 7 of the WSRA

Design changes may be required only if the river-administering agency intends to make an adverse determination under Section 7 and suggests measures to eliminate the adverse effects. Continued contact and coordination with the administering agency is crucial during project development. For example, aesthetic treatments may be required if the project adversely affects scenic values. Staff of FHWA and the river-administering agency should also consider opportunities in project design based on direction in the river management plan. While such opportunities, e.g., increased or decreased access, are not a part of the Section 7 determination, assuming such components are not water resources projects, their inclusion in project design may protect or enhance river values, in conformance with direction to all federal agencies in Section 12(a) of the WSRA and possible formal agreements with specific administering agencies.

Section 4(f) of the DOT Act of 1966 applicability

Publicly owned public parks, recreation areas, refuges, and historic sites within a WSR corridor are subject to Section 4(f). Lands in WSR corridors managed for multiple uses may or may not be subject to Section 4(f) depending on the manner in which they are administered by the managing agency. Close examination of the management plan is required prior to any use of these lands for transportation purposes. Section 4(f) would apply to those portions of the land specifically designated in a management plan for recreation or other Section 4(f) uses. Where the management plan does not identify specific uses or where there is no plan, NCDOT must consult further with the river-administering agency to make a Section 4(f) determination.

Note: FHWA makes the Section 4(f) determination.

Related Internet Links

- **US Code:** [16 USC 1271-1287](#)
- **Code of Federal Regulations:** [36 CFR 251](#) (land uses), [36 CFR 292](#) (), [36 CFR 297](#) (wild & scenic rivers), [43 CFR 3800](#) (mining claims), [43 CFR 8340](#) (ORVs), [43 CFR 8350](#) (management areas), [43 CFR 8360](#) (visitor services), [43 CFR 8370](#) (use authorizations)
- [NPS National Wild & Scenic Rivers System](#)
- [FHWA Environmental Guidebook \(Wild & Scenic Rivers\)](#)

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Wild & Scenic Rivers Act

