

Frequently Asked Questions about the Skagit Wild and Scenic River System

These questions and answers address issues relevant to managing the Skagit Wild and Scenic River System. See the sidebar for general Wild & Scenic River Q & A or visit the [Interagency Wild and Scenic Rivers Coordinating Council](#) website. In the [Publications Section](#) you will find several documents related to WSR Management.

- For questions and answers regarding water resource projects refer to Appendix F in the *Wild and Scenic River Act: Section 7*.
- For a detailed discussion of Wild and Scenic River management related to each section of the Act, see the paper: *Wild and Scenic River Management Responsibilities*.

THE NATIONAL WILD AND SCENIC RIVERS SYSTEM (National System) AND SKAGIT WILD AND SCENIC RIVER

Q: What is the purpose of the Wild and Scenic Rivers Act (WSRA) and of adding rivers to the National System?

A: The WSRA establishes a national policy and program to preserve and protect selected rivers, or segments of rivers, in their free-flowing condition.

The Skagit Wild and Scenic River System (Skagit System) was added to the National System by Public Law 95-625 on November 10, 1978.

Q: What are the qualifications for, and how are, rivers added to the National System?

A: To be designated under the [Wild and Scenic Rivers Act](#), rivers or segments of river must be free-flowing and possess at least one “outstandingly remarkable” value—such as scenic, recreational, geologic, fish, wildlife, historic, cultural, or other similar features. Congress or the Secretary of the Interior may add rivers to the National System.

The Skagit System’s exceptional fisheries, wildlife, and scenic resources are the outstandingly remarkable values for which the river was designated, along with its free-flowing condition and high water quality.

Q: How are designated wild and scenic rivers (WSR) managed?

A: WSRs are managed to protect and enhance their free-flowing condition, water quality and outstandingly remarkable values (ORVs). This nondegradation and enhancement policy allows existing uses to continue on federal lands where they do not conflict with river protection. Through development of a management plan and in ongoing management, the river-administering agency works with its partners to identify and resolve any activities adversely affecting river values on federal and nonfederal lands.

The U.S. Department of Agriculture (USDA), Forest Service, has the responsibility to manage the Skagit System, including regulation of surface waters for recreational activities. Although the Forest Service manages the river system and has management authority on National Forest System lands, stewardship is a shared responsibility because the Skagit Wild and Scenic River System flows through both public and private lands. Many different people—from private landowners to members of federal, State, county, and private organizations—interact with one another in decision-making, working together to protect this special place.

The River Management Plan: Skagit River was completed for the Skagit System in 1983.

Q: What are the general effects of WSR designation?

A: WSR designation helps to protect and enhance a river’s current natural condition and provide for public use consistent with retaining those values. Designation affords certain legal protection from adverse development; for example, no new dams can be constructed and no federally assisted water resource developments can be allowed if they would adversely affect designated river values. Where private lands are involved, the river-administering agency works with local governments and landowners to develop protective measures.

Q: What does a river’s [classification](#) mean?

A: Rivers added to the National System by Congress are classified in one of three classes depending on the extent of development and accessibility along each segment:

- Recreation
The Skagit River segment of the Skagit System is designated as recreational.
- Scenic
The Sauk, Suiattle, and Cascade River segments of the Skagit System are designated as scenic.
- Wild
There are no wild segments in the Skagit System.

In addition to describing the type and intensity of development in existence at the date of the river’s designation, classification serves as a framework for future in-corridor land uses on federal lands, and as a guide in working with state and local governments, and landowners on nonfederal lands.

A river’s classification does not represent the values for which it was added to the National System. For example, a “recreational” river does not necessarily mean recreation is an ORV or that this segment of the river will be managed for recreational activities. The direction in the WSRA to protect and enhance the river’s values (free-flow, water quality and ORVs) applies equally to each of the three classifications.

Q: How many rivers and miles of river are included in the National System? ...in the Skagit?

A: As of November 2004, there are 163 rivers and 11,338 miles in the National System.

The [Skagit Wild and Scenic River System](#) includes 158.5 miles of the Skagit River and its tributaries—the Sauk, Suiattle, and Cascade rivers.

MANAGING THE SKAGIT SYSTEM: RESPONSIBILITY OF FEDERAL, STATE AND LOCAL AGENCIES

Q: Does the Forest Service as the river-administering agency have the authority to regulate activities on nonfederal land?

A: No. The Forest Service does NOT have authority to regulate the use of private lands. As they were prior to designation, nonfederal lands remain subject to state and county laws and regulations.

Q: What is the role of the Forest Service on nonfederal lands?

A: The role of the Forest Service on nonfederal lands is to monitor activities within the river corridor and, for any proposed activity that is likely to have adverse impacts on the values of the river system, to work cooperatively with state and local agencies, and landowner(s) to resolve. The Forest Service may provide technical assistance to find ways to alleviate or mitigate the potential threat. If state, county and local laws and regulations and/or technical assistance fail to protect river values, the Forest Service has the authority for limited purchase of private lands in fee title or a scenic or access easement.

Q: What is the authority for and how much land may be purchased within a WSR corridor?

A: Section 6 of the WSRRA authorizes acquisition of fee title within the river corridor to not more than an average of 100 acres per river mile. This acquisition is on a willing seller basis. The WSRRA also provide for the acquisition of partial rights (easement).

Q: What is the role of the Forest Service in regulating surface use of the water within the a Wild and Scenic River?

A: Section 10(d) of the WSRRA provides for the USFS to use its general statutory authorities to protect WSR values. This section allows the USFS to require special-use permits for all commercial guiding services on WSRs. (36 CFR 261.1(a)(4) and 36 CFR 261.58(z). Further, the Code of Federal Regulations (CFR) requires that all commercial uses of National Forest System Land, which includes waters administered by the Forest Service, must be authorized by a special-use permit (36 CFR 251.50(a).

Requiring special-use permits for commercial guides and, as appropriate, non-regulatory or regulatory permits for private on-river and/or in-corridor river use allows the USFS to provide a level of public safety, to maintain a desired recreation experience, and to protect biological and physical values. On-river limitations may include, for example, restrictions on the numbers of private and commercial boaters, timing of use, and type and size of craft. In-corridor limitations may include, for example, restrictions on party size, timing of use, and type of activities.

Q: What is the role of the Forest Service relative to preserving the river's free-flowing condition?

A: Section 7(a) of the WSRRA directs the river-administering agency to review water resources projects (proposed activity within the river's bed or its banks from 36 CFR 297.3) that require

federal assistance (e.g. loan, grant, permit or license). This authority is based on existing federal law under the authority of other federal agencies (e.g. the Army Corps of Engineers – ACOE – administers proposals for disposal of dredged or fill material in waters of the United States under Section 404 of the Clean Water Act). Review by the Forest Service is to determine if a project proposal adversely affects the values for which a river is added to the National System – i.e., its free-flowing condition, water quality, and outstandingly remarkable values.

Q: Does the Forest Service as the river-administering agency have the authority to prohibit a landowner from using bank stabilization measures?

A: No. The Forest Service does NOT have the authority to prohibit a landowner from using bank stabilization measures. That authority resides with the *assisting* federal agency, typically the ACOE through its administration (33 CFR 320) of Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. The assisting federal agency may not authorize bank stabilization or other water resources projects determined by the Forest Service to adversely affect the values for which the river was established (16 USC 1278).

Q: May the FS direct actions of state or local agencies?

A: No. The Forest Service does NOT have authority to direct the actions of state or local agencies. The WSRA encourages a federal-state partnership in river administration. It recognizes the benefits from collaborative implementation of the river plan and the role of state and local governments in directing activities on nonfederal land (e.g., water pollution abatement, zoning) in Section 10(e). This section of the WSRA authorizes the Forest Service to enter into written cooperative agreements with state and local agencies for planning and administration.

Q: May the FS direct actions of other federal agencies?

A: No. The Forest Service does NOT have authority to direct the actions of other federal agencies. Through the Section 12(a) of the WSRA, Congress directs other federal agencies to protect river values in addition to meeting their agency mission. This direction applies to activities conducted by a federal department or agency within or proximate to a WSR corridor.

Q: Generally, what responsibilities do other federal, state and local agencies have with respect to management of the Skagit System and how do their authorities relate to that of the Forest Service?

A: The Forest Service uses the Skagit River Management Plan to manage National Forest System lands. Other local, state and federal agencies have responsibility and authorities on non-National Forest System lands. Among the key agencies with authorities related to management of the Skagit System are the following:

Local agencies:

- [Skagit](#) and [Snohomish](#) Counties and incorporated cities: (permitting, zoning, shoreline management, flood control, special districts, utilities; Shoreline Management Act, Growth Management Act)

State agencies:

- [Department of Fish and Wildlife](#): Responsible for management of the State’s fish and wildlife resources. (Permitting: [hydraulic project approval](#),)
- [Department of Ecology](#) : Responsible to protect, preserve and enhance the State’s environment and promote wise management of its natural resources. (Services: [environmental permitting](#) assistance. Programs: water quality monitoring; Shoreline Management, Shoreline Master Program compliance, and Washington Water Pollution Control Act consistency).
- [Department of Natural Resources](#) : Responsible to manage state owned lands, natural resources and [aquatic resources](#), provide forest fire protection and to [permit forest practices](#) and firewood cutting.
- Other state agencies with responsibilities which relate to some aspect of river management include:
 - [Washington State Parks and Recreation Commission](#)
 - [Interagency Committee for Outdoor Recreation](#)
 - [Office of Archeology and Historic Preservation](#)
 - [Department of Transportation](#)

Federal agencies: (This is a partial list, see also [Implementing the Wild & Scenic Rivers Act: Authorities and Roles of Key Federal Agencies](#) on the [Publications page](#) at the IWSRCC website.)

- [Army Corps of Engineers](#):(ACOE) has three broad program areas related to river management: [civil works](#) (navigation, hydropower, flood control, irrigation and water supply, fish and wildlife conservation enhancement, regulation of construction and dredged and fill material discharges into aquatic areas, and outdoor recreation); reimbursable support of other federal agencies (such as the EPA’s “Superfund” program); and responding to [emergency relief](#) activities directed by other federal agencies. (Permitting: discharge of dredge/fill material or structures, under [Section 404 Clean Water Act](#) and [Section 10 Rivers and Harbors Act](#).)
- [U.S. Fish and Wildlife Service](#): Mission: working with others to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. (Permitting: [Endangered Species Act requirements](#))
- [NOAA Fisheries](#): Mission: stewardship of living marine resources through science-based conservation and management and the promotion of healthy ecosystems. (Permitting: [Endangered Species Act requirements](#))
- [Environmental Protection Agency](#): was established in 1970 to protect and preserve public health and the vitality of natural ecosystems. Related to the goals of the WSRA, the EPA administers activities under the Clean Water Act (CWA) and Safe Drinking Water Act (SDWA).
- [FEMA](#): Mission: reduce the loss of life and property and protect our institutions from all hazards by leading and supporting the nation in a comprehensive, risk-based emergency management program of mitigation, preparedness, response and recovery. FEMA provides disaster recovery funding for projects which may require review under WSRA.
- [FERC](#): The Federal Energy Regulatory Commission (FERC) is an independent federal commission in the Department of Energy with the exclusive authority to license non-federal water power projects on navigable waterways and federal lands. There are two major licensed hydropower projects in the Skagit watershed, the Skagit River Project ([Seattle City Light](#)) and the Baker River Project ([Puget Sound Energy](#)).

Tribes: Washington State treaty tribes are sovereign nations and co-managers with WDFW of the state's fishery resource. There are three local tribes in the Skagit System.

- Upper Skagit Tribe
- Swinomish Tribe
- Sauk Suiattle Tribe
- [Skagit River Systems Cooperative](#): is a natural resource management agency working on behalf of the Sauk-Suiattle and Swinomish Indian Communities.

Non-governmental organizations: There are [many](#) non-governmental organizations with an interest in the conservation and management of the Skagit Wild and Scenic River and its resources. Some of the key organizations include:

- [The Nature Conservancy](#)
- [North Cascades Institute](#)
- [Skagit Fisheries Enhancement Group](#)
- [Skagit Watershed Council](#)

PROCEDURES AND PERMITS

Q: How does WSR designation affect a landowner's ability to stabilize the bed and/or bank of the rivers in the Skagit System?

A: The Forest Service, as the river-administering agency, is directed in Section 7(a) of the WSRA to determine if a proposed water resources project adversely affects river values – i.e., the Skagit System's free-flowing condition, water quality and ORVs (fish, wildlife and scenery). Such review is triggered when the stabilization proposal is assisted by another federal agency through, for example, a loan, grant, permit, or license. If the Forest Service determines the proposed project will adversely affect values, the federal assistance may not continue as proposed.

Specific to the Skagit System:

For “scenic” segments of the river, on national forest land, the Skagit River Management Plan directs that “artificial stabilization will only be used under strict controls and in very limited locations on the Scenic Rivers (decision authority–Regional Forester)” (Vol. II, page 16).

For the “recreational” segment of the river, the law designating the Skagit System includes the following direction:

“...Riprapping related to natural channels with natural rock along the shorelines of the Skagit segment to preserve and protect agricultural land shall not be considered inconsistent with the values for which such segment is designated...” (16 USC 1274(1)(18)).

Q: How are “agricultural” lands defined by the Forest Service with respect to the Skagit System?

A: The current definition comes from Washington State law and has been incorporated into county code.

Agricultural land— RCW 36.70A.030

(2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by

*RCW [84.33.100](#) through [84.33.140](#), finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

Q: Is review under Section 7(a) required for maintenance of an existing water resources projects?

A: Generally no. The term *maintenance* assumes there will be no change from the original character, scope or size of the project. Maintenance of an existing water resources does not generally require federal assistance (loan, grant, permit or license) and is therefore not subject to review under Section 7(a).

The list of discharge activities not requiring a permit under Section 404 of the Clean Water Act (administered by the ACOE) includes:

“Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption” (33 CFR Subpart 323.4(a)(2).

Q: Is review under Section 7(a) required for repair of an existing water resources projects?

A: Yes. The term *repair* assumes a change from the original character, scope or size of the project. Evaluation under Section 7(a) of the WSRA is triggered when federal assistance is required for repair of an existing water resources project. Generally, however, review under the WSRA will not prevent a landowner from repair of a water resources project that predates the river’s addition to the National System (1978 for the Skagit) provided the proposed repair has the same (or lesser) effect on river values. Changes to the original protection measure may also be possible if the alternative better protects and enhances river values.

Q: What are some examples of private property protection projects that would be acceptable in a Wild and Scenic River?

A: Projects that encourage natural processes, as such:

- Native plantings to reduce streambank erosion.
- Plantings of cuttings, installation of untreated wood, limited placement of stones, and installation of fabricated mats of natural materials to stabilize streambanks, protect the floodplain, and reestablish the riparian network.

Generally these types of projects use plant roots to bind soil and decrease water velocity, which stabilizes riparian areas. Healthy riparian areas enhance natural appearances, provide water filtration, and collect soil to rebuild eroded banks and reduce maintenance costs. Some general references:

WA Department of Fish and Wildlife Habitat and Technical Assistance "Integrated Streambank Protection Guidelines": <http://wdfw.wa.gov/hab/ahg/ispqdoc.htm>

A Soil Bioengineering Guide for Streambank and Lakeside Stabilization published by the Forest Service San Dimas Technology and Development Center. <http://www.fs.fed.us/publications/soil-bio-guide/>

Stream Corridor Restoration: Principles, Processes, and Practices -- a technical reference manual developed by the federal Interagency Stream Restoration Working Group: http://www.nrcs.usda.gov/technical/stream_restoration/

Q: What are some examples of private property protection projects that are likely to adversely affect WSR values?

A: Projects such as:

- Installation of concrete, rock, or treated wood as retaining walls to redirect the flow of the river.
- Installation of concrete or rock structures (such as gabions or stream barbs) that redirect the flow of the river or eliminate its connection with side channels or wetlands.

These types of projects are expensive to build, are prone to failure, and can adversely impact adjacent streambanks and downstream property.

Q: If a flood on the Skagit System creates new channels, may a landowner redirect the flows from the new channels?

A: If the activity to redirect the river's flow requires federal assistance then, the river-administering would review the proposal under Section 7(a). In most circumstances, redirecting the river's flow would adversely affect WSR values.

Q: Can a landowner or other agency remove log jams?

A: Generally, the Washington Department of Fish and Wildlife and the Department of Natural Resources have jurisdiction and proprietary rights over logs in waters of the State. The Forest Service works closely with these agencies to address problems caused by log jams.

On the National Forest, log jams within the WSR corridor can be managed under certain conditions, consistent with WSRA provisions.:

“... to reduce unacceptable damage to property, provided it is consistent with key river values. Log jams should be considered a natural hazard to be encountered by floaters. They will not be removed solely of facilitate floaters. However, individual sweeper logs may be removed if they present an extreme hazard to boaters” (Skagit River Management Plan Vol. II, pages 15 and 18).

However, depending on the specific circumstances, log jams may actually decrease flooding problems, and their removal may intensify downstream impacts. Log jams may act to stabilize riparian systems and help slow or direct the river's flow; they also may add complexity to river channels and provide important habitat for salmon, trout, and other aquatic organisms, and terrestrial wildlife.

Any proposal to remove log jams must be analyzed in consultation with the Washington [Department of Natural Resources](#) and the [Department of Fish and Wildlife](#), through its permitting of construction projects in State waters. A hydraulic project approval ([HPA](#)) is required for any

construction or other work that will use, divert, obstruct, or change the natural flow or bed of any fresh waters of the State.

Q: How are emergency situations handled under WSRA Section 7(a)?

A: In emergency situations where federal assistance is involved in a project subject to Section 7(a), the time frame usually allows only for notification. The federal assisting agency will then follow-up with the river-administering agency for project review after the fact. In other emergency situations, federal assistance may not be triggered during the event and, therefore, Section 7 would not apply. For example, under ACOE rules at 33 CFR 323.4(a)(2) emergency maintenance of recently damaged infrastructure when there would be no modification changing the character, scope or size of the original fill design is exempt from Section 404 of the Clean Water Act and would not require a permit.

Q: What is the permitting process for a landowner proposing to stabilize bed and/or bank of the Skagit System?

A: Generally, several approvals are involved. We recommend that you contact the Washington State Department of Ecology [Office of Regulatory Assistance](#), to determine what permits are necessary. The Forest Service is only involved in projects on private lands when the proposal is in the river's bed or its banks and is assisted by a federal agency (e.g. loan, grant, technical assistance, or permit). The Forest Service may also be involved in non-federally assisted project proposals in the river's bed or its banks or in upland activities (e.g. timber harvest) if we are requested to do so by another agency.

If the proposed project meets the definition of a water resources project (activity with river's bed or its banks) that is federally assisted, the Forest Service will provide a WSRA Section 7 Determination to the assisting agency. The possible outcomes of such evaluation are:

- Project has no adverse effects on river values; federal assistance may continue.
- Project has adverse effects on river values; federal assistance may not continue as proposed.
- Project has adverse effects on river values; the river administering agency may suggest ways to avoid adverse effects and a revised project may be resubmitted to the federal assisting agency.

For specific details on permitting processes, consult the appropriate agencies via links from the State Department of Ecology [Office of Regulatory Assistance](#) website or from the previous list of agencies with river management responsibilities.

SOURCES

- (1) National WSR brochure
- (2) Interagency Wild and Scenic River Coordinating Committee Q&A paper
- (3) River Management Plan: Skagit River 1983
- (4) Skagit Wild and Scenic River Study Report
- (6) Skagit WSR recreation brochure