

PART 2, CHAPTER 12

WILD AND SCENIC RIVERS

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PART 2 CHAPTER 12

WILD AND SCENIC RIVERS

12.1 OVERVIEW

Pursuant to **23 United States Code (U.S.C.) § 327** and the implementing Memorandum of Understanding (MOU) executed on December 14, 2016, the Florida Department of Transportation (FDOT) has assumed Federal Highway Administration's (FHWA's) responsibilities under the **National Environmental Policy Act (NEPA)** for highway projects on the State Highway System (SHS) and Local Agency Program (LAP) projects off the SHS. In general, FDOT's assumption includes all highway projects in Florida whose source of federal funding comes from FHWA or which constitute a federal action through FHWA. This includes responsibilities for environmental review, interagency consultation and other activities pertaining to the review or approval of **NEPA** actions. Consistent with law and the MOU, FDOT will be the Lead Federal Agency for highway projects with approval authority resting in the Office of Environmental Management (OEM).

This chapter provides procedures for evaluating and documenting potential effects of federal projects on Wild and Scenic Rivers and designated study rivers. FDOT is responsible for determining whether a federal transportation project impacts a designated Wild and Scenic River or a congressionally designated study river and for consulting with the National Park Service (NPS) or other appropriate River Administering Agency (RAA) to avoid direct and adverse effects to these resources. This chapter provides guidance on complying with the following:

1. Presidential Directive dated August 2, 1979, **Wild and Scenic Rivers and National Trails**;
2. Council of Environmental Quality (CEQ) Memorandum dated August 10, 1980, **Interagency Consultation to Avoid or Mitigate Adverse Effects of Rivers in the Nationwide Inventory**;
3. **Federal Register (FR), Volume 47, Number 173**, dated September 7, 1982 (**47 FR 39454**), **National Wild and Scenic Rivers System-Final Revised Guidelines for Eligibility, Classification, and Management of River Areas**;
4. **The Wild and Scenic Rivers Act (WSRA) of 1968, as amended, 16 U.S.C. § 1271 et seq.**; and,
5. **36 Code of Federal Regulations (CFR), Part 297, Wild and Scenic Rivers.**

The **WSRA** was signed into law on October 2, 1968 (**Public Law 90-542, as amended**) to identify and preserve select river segments and their immediate surroundings possessing "outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values." **Section 7** of this **Act**, along with the

implementing rules, requires that no federal license, permit, or other authorization be issued for a project which would affect the free flowing characteristics, the water quality, or the outstandingly remarkable values of a Wild and Scenic River or a river under study for designation as a Wild and Scenic River (study river). Therefore, prior to issuing such a project license, permit, authorization, or federal funding to a project which is within, alongside, above or below the boundaries of these resources, the federal agency must 1) provide notice to the Secretary responsible for administering the river and 2) consult with the NPS and/or any other appropriate federal agency administering the river to reach a determination that the project will not have a direct and adverse effect on the outstanding remarkable values that provide the basis for the segment's designation as a Wild and Scenic River or study river.

The following are the two designations of rivers assessed in federal Environmental Documents:

1. **Nationwide Rivers Inventory** - Includes the river segments designated in the **WSRA** for further study in order to determine if they should be included in the National Wild and Scenic Rivers System (study rivers) as well as the river segments which have been formally designated as Wild and Scenic Rivers.
2. **Wild and Scenic Rivers** - Those rivers with free-flowing conditions approved by the Secretary of the U.S. Department of Interior (USDOI) being classified, designated, and administered as one of the following:
 - a. **Wild River Areas:** Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.
 - b. **Scenic River Areas:** Those rivers or sections of rivers that are free of impoundments with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.
 - c. **Recreational River Areas:** Those rivers or sections of rivers that are readily accessible by roads or railroads, that may have some development along their shorelines, and that may have undergone some impoundments or diversion in the past.

It is the responsibility of the District to determine whether a project is located within, across, or adjacent to the boundaries of a river listed in the **Nationwide Rivers Inventory (NRI)**, as early as possible in the planning or project development process. To obtain the most current list of the **NRI**, contact the NPS. See [Section 12.3](#) for a link to the NPS website.

The following segments of two rivers in Florida are currently designated as Wild and Scenic Rivers:

1. **Northwest Fork of the Loxahatchee River:** From River Bend Park downstream 7.6 miles to Jonathan Dickinson State Park.
2. **Wekiva River:** Consists of 41.6 total miles. The Wekiva River from its confluence with the St. Johns River to Wekiwa Springs. Rock Springs Run from its headwaters at Rock Springs to the confluence with the Wekiva Springs Run. Black Water Creek from the outflow from Lake Norris to the confluence with the Wekiva River

12.2 PROCEDURE

12.2.1 Determination of Involvement

Each river has specific segments that meet qualifications for inclusion in the **NRI** or for Wild and Scenic River designation. In cases where the project is in, across, or adjacent to a study river or a listed Wild and Scenic River, the project, at minimum, will be a Type 2 Categorical Exclusion (CE).

There are two ways **Section 7** of the **WSRA** can apply to federally funded or approved transportation projects. The first is when a project is located within the boundaries of a designated or study river and the second is when a project is alongside the boundaries, or which requires construction activity upstream, downstream or on a tributary of the designated or study river.

Section 7 establishes three (3) procedural findings that apply to projects involving river segments identified in the **NRI**. These findings are related to the nature of the project's relationship to the river segment and, in the case of the last two procedural findings, whether the river segment involved is a designated Wild and Scenic River or a study river. Furthermore, the analysis for these findings must be coordinated with the river managing agency and/or the NPS, as appropriate.

1. Direct and adverse impacts to the river - This evaluation occurs for all river segments identified in the **NRI** (that is, both study and designated Wild and Scenic Rivers). It applies to projects which are located inside the river which may alter the free-flowing conditions, water quality and/or the Outstanding River Values (ORVs).
2. Invade the area or unreasonably diminish the values of the river - This evaluation applies to projects outside the designated wild and scenic rivers corridor which may impact the river or its ORVs.
3. Invade the area or diminish the values of the river - This evaluation applies to projects outside the designated study river corridor which may impact the river or its ORVs.

The ORVs are defined in the **WSRA** as those resources within a river corridor worthy of special protection. The District will determine if the project is within, across, or adjacent to any rivers listed in the **NRI**. This determination may have been made during the Efficient Transportation Decision Making (ETDM) process where qualifying projects are entered

into the Environmental Screening Tool (EST) by the ETDM Coordinator. (See the [ETDM Manual, Topic No. 650-000-002](#))

During Project Development and Environment (PD&E), the District reviews information from the ETDM process contained in the **Programming Screen Summary Report**, especially any Environmental Technical Advisory Team (ETAT) comments for the “Special Designations” issue. It may be helpful to also review ETAT comments on other issues such as “Water Quality and Quantity.” Comments by the NPS are especially important.

For projects not qualifying for ETDM screening, the District Project Manager determines if the project is located within, across, or adjacent to the boundaries of a river segment listed on the **NRI**. These river segments are delineated and identified in the geographic layers used by the EST and can be accessed for locational data for projects which do not qualify for ETDM screening. If there is no involvement with any rivers listed in the **NRI** the project may proceed without further involvement with the **WSRA**. The finding of no involvement should be recorded in the project file and in the appropriate Environmental Document.

12.2.1.1 Rivers Not Listed on the Nationwide Rivers Inventory

If the project is not within, across, or adjacent to the boundaries of a river segment listed in the **NRI**, then no further action is required in regard to compliance with legislation governing the consideration of designated Wild and Scenic River or study river segments. Documentation is required in the Environmental Document according to [Section 12.2.3.1](#).

12.2.1.2 Rivers Listed on the Nationwide Rivers Inventory

If the project is within, across, or adjacent to the boundaries of a river segment listed in the inventory, proceed with coordination in [Section 12.2.2](#) and documentation in accordance with [Sections 12.2.3.2](#) and [12.2.3.3](#).

12.2.2 Coordination

For projects involving either a study river or a river designated as a Wild and Scenic River, consultations with the managing entity of the river and the appropriate RAA must be conducted in accordance with **Section 7** of the **WSRA** (see the guidance provided in **Interagency Wild and Scenic Rivers Coordinating Council: Wild and Scenic Rivers Act, 2004** in [Section 12.3](#)). When the project involves either a study river or a designated river and the project development process reaches the stage when alternative Right of Way (ROW) requirements have been conceptually defined, aerials depicting alternatives with conceptual ROW limits will be submitted for review and comment to the appropriate RAA for designated rivers and for study rivers, to the NPS at:

Florida Field Office
National Park Service-RTCA Program

665 S. Orange Ave.
Sarasota, FL 34236

This coordination letter, includes the following statement:

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding dated December 14, 2016 and executed by FHWA and FDOT.

The NPS (or other appropriate agency) will respond within a period of thirty (30) days to the request. Any responses or comments received should be resolved. There are times when this may require close coordination with the RAA or the NPS for certain projects where there may be either a physical or visual intrusion of the proposed project on the river. In all cases, however, the responses, comments and resolutions are included and discussed in the Wild and Scenic Rivers section of the Type 2 CE, Environmental Assessment (EA), or Environmental Impact Statement (EIS), as appropriate. For EAs and EISs, a copy of the letters and resolutions should be included in the Appendix and the discussion of coordination with NPS and/or the other managing agencies and, as appropriate, governing bodies in the Comments and Coordination section should complement what is written in the Wild and Scenic Rivers section of the document. For a Type 2 CE, appropriate letter(s), meeting minutes and resolutions should be referenced in the Type 2 CE documentation and placed in the project file.

When the project involves a designated Wild and Scenic River, coordination and consultation includes the appropriate RAA. If the river is managed by a federal agency other than the NPS [these include the U.S. Forest Service (USFS), the Bureau of Land Management (BLM) and the U.S. Fish and Wildlife Service (USFWS)], the coordination must include that agency. For state-managed Wild and Scenic Rivers, the coordination must always include the NPS and the governing council of the specific river.

12.2.3 Documentation

As appropriate, the Type 2 CE, EA, or EIS will contain one of the standard statements set forth in the next three sections regarding the designation or involvement with a Wild and Scenic or study river. The statement must be supported by appropriate documentation in the Wild and Scenic Rivers section of the Environmental Document (see [Part 1, Chapter 5, Type 2 Categorical Exclusion](#), [Part 1, Chapter 6, Environmental Assessment](#), and [Part 1, Chapter 8, Draft Environmental Impact Statement](#)).

12.2.3.1 Rivers Not Listed on the Nationwide Rivers Inventory

For Type 2 CE projects involving rivers not included on the **NRI**, a standard statement is not required. It is sufficient to mark the box (No Inv) for no involvement on **Section 3.C.4. Wild and Scenic Rivers** of the **Type 2 Categorical Exclusion Determination Form, Form No. 650-050-11**. If needed, this determination can be explained in the Supporting Information ([Part 1, Chapter 5, Type 2 Categorical Exclusions](#)).

For EA or EIS projects involving rivers not included on the **NRI**, the following standard statement is included in the Wild and Scenic Rivers section of the EA or EIS. As appropriate, cite the **WSRA**:

The (Name of River) is not listed in the National Park Service’s Nationwide Rivers Inventory and is not designated as a Wild and Scenic River and, therefore, the coordination requirement for the Wild and Scenic Rivers Act does not apply to this project.

12.2.3.2 Rivers Listed on the Nationwide Rivers Inventory Without Impacts

For projects involving rivers included on the **NRI** which have no impacts on the river, the following standard statement is included in Wild and Scenic Rivers section of the Type 2 CE (Supporting Information), EA, or EIS.

The (Name of River) is listed in the National Park Service’s Nationwide Rivers Inventory (or is a designated Wild and Scenic River). After coordination with the National Park Service, or other appropriate River Administrating Agency, it has been determined that the project will not directly affect, invade or (unreasonably) diminish the outstanding river values of (Name of River).

The “unreasonably” diminish statement applies to designated Wild and Scenic Rivers only; for study rivers, the higher threshold of just “diminish” applies.

In addition, for EA and EIS documents, the RAA and NPS letters of no direct or adverse effects to ORVs should be included in the Appendix along with appropriate information in the Comments and Coordination section. For a Type 2 CE, the NPS letter should be referenced in the Type 2 CE documentation and placed in the project file.

12.2.3.3 Rivers Listed on the Nationwide Rivers Inventory with Impacts

For projects involving potential impacts to rivers listed on the **NRI**, including those river segments listed as designated Wild and Scenic Rivers, the following areas should be assessed and included in the Wild and Scenic Rivers sections of the Type 2 CE, EA, or EIS.

1. State the name and description of the inventory river;
2. Note whether the river is a designated Wild and Scenic River or a study river;
3. Describe the surrounding environment and setting of the river;
4. Describe the river’s usage;

5. Identify any adverse impacts on natural, cultural, and recreational values (the ORVs including any scenic values) within and on each side of the river from the river bank inland one-fourth of a mile. Examples of adverse impacts would be:
 - a. Alteration of free-flowing nature of river,
 - b. Alteration of the setting, or
 - c. Deterioration of water quality.
6. Address comments submitted by NPS and other appropriate agencies with letters included in the Appendix (for EA or EIS only);
7. Reference the NPS and other agency letters in the Type 2 CE documentation (for Type 2 CE only);
8. State alternatives and designs considered that can avoid or minimize harm;
9. Address measures to mitigate harm;
10. Determine if the project's impacts will preclude or downgrade the wild and scenic designation of the river; and
11. Adopt and summarize a monitoring and enforcement program as developed in consultation with the RAA and, as applicable, the managing board or committee, where applicable, for any mitigation listed in the Environmental Document.

If a determination is made that a project will have no impact on either a study river or a designated Wild and Scenic River after coordination with NPS or other appropriate agency, then the standard statement in [Section 12.2.3.2](#) should be provided in the Wild and Scenic Rivers section of the Environmental Document.

12.2.4 Section 4(f) Applicability

Publicly-owned waters of designated Wild and Scenic Rivers, as well as study rivers, may be protected by **Section 4(f)** based upon their designated functions. Publicly-owned lands in the immediate proximity of such rivers may also be protected by **Section 4(f)**, depending on the manner in which they are administered by the federal, state, or local government which manages the land. Designation under the **WSRA** does not in itself create a **Section 4(f)** resource. However, ORVs often include consideration of surrounding areas which function for **Section 4(f)** protected purposes. In addition, the river management may include **Section 4(f)** functions over the length of the river or in certain areas of the river. **Section 4(f)** would only apply to sites that function as, or which are designed or designated as public parks, recreation areas, wildlife and waterfowl refuges, and historic and archaeological sites. Therefore, during the consultations with the RAA or NPS for projects which are alongside, across, or within rivers listed in the **NRI**, the FDOT District must include consultations regarding the functions of the river and its surroundings in the area of the proposed project. When **Section 4(f)** applies to the use

of property which is either within the river corridor or which represents an element of the ORVs, the consultations with the official of the agency having jurisdiction over the property in question, the NPS and other appropriate agencies to resolve these potential adverse impacts will need to be coordinated carefully. This is because concurrence on the **Section 4(f)** finding/approval will need to fulfill the coordination and approval requirements of **Sections 7 and 12** of the **WSRA**. See [Part 2, Chapter 7, Section 4\(f\) Resources](#), or Questions 21 B,C and D contained in the **July 20, 2012 Section 4(f) Policy Paper** located at FDOT's [Section 4\(f\) References](#) web page for more information.

12.3 REFERENCES

CEQ Memorandum, Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory, August 10, 1980

FHWA, 2012. Section 4(f) Policy Paper. July 20, 2012.
<https://www.environment.fhwa.dot.gov/4f/4fpolicy.asp>

FDOT. [Efficient Transportation Decision Making Manual, Topic No. 650-000-002](#)

Interagency Wild and Scenic Rivers Coordinating Council. Wild and Scenic Rivers Act (WSRA): Section 7. October 2004. <http://www.rivers.gov/documents/section-7.pdf>

Memorandum of Agreement Between FHWA and FDOT Concerning the State of Florida's Participation in the Surface Transportation Project Delivery Program Pursuant to 23 U.S.C. 327, December 14, 2016.
<http://www.fdot.gov/environment/pubs/Executed-FDOT-NEPA-Assignment-MOU-2016-1214.pdf>

NPS. <http://www.nps.gov/ncrc/programs/rtca/nri/index.html>

National Wild and Scenic Rivers Systems; Final Revised Guidelines for Eligibility, Classification and Management for River Areas, Federal Register, Vol. 47, No. 173, September 7, 1982

Presidential Directive, Wild and Scenic Rivers and National Trails, August 2, 1979

Title 16 U.S.C. § 1278 - Restrictions on water resources projects.
<http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title16-section1278&num=0&edition=prelim>

Title 36 CFR Part 297. Wild and Scenic Rivers. <https://www.gpo.gov/fdsys/pkg/CFR-2012-title36-vol2/pdf/CFR-2012-title36-vol2-part297.pdf>

The Wild and Scenic Rivers Act, P.L. 90-542

The Wild and Scenic River Study Process, Technical Report for the Interagency Wild and Scenic Rivers Coordination Council, December 1999

Wekiva River Rock Spring Run & Seminole Creek Wild and Scenic River Study.
Southeast Support Office, National Park Service, U.S. Department of the Interior
(USDOI), June 1999

12.4 FORMS

Type 2 Categorical Exclusion Determination Form, Form No. 650-050-11*

*To be completed in [SWEPT](#)

Note: Hyperlinks are only for those with FDOT Intranet access only. Those without Intranet access may view or download forms at: <http://www.fdot.gov/procedures/>. Sign in is required.

12.5 HISTORY

03/15/2004, 01/08/2008, 8/15/2016