

Overview of the Wild & Scenic Rivers Act

SECTION 1:

Establishes the National System. States its purpose, lists eligibility criteria, identifies outstandingly remarkable values (ORVs), scenic, recreation, geological fish and wildlife, historic, cultural, or other similar values and the need to protect the free-flowing condition of rivers.

Declares National Policy to:

- Preserve certain rivers and their immediate environments.
- Maintain free-flowing condition (See Section 16 definitions).
- Protect water quality (Section 12).
- Fulfill other vital national conservation purposes.

Compliments the national policy of dams and other natural resource development projects.

SECTION 2:

Specifies two methods by which a river can be designated:

- (a)(i) By Act of Congress, or
- (a)(ii) By the Secretary of the Interior upon application of the governor(s) of a state(s). To be administered by an agency or political subdivision of a state at no expense to the federal government.

(b) Eligibility Requirements:

- Free-flowing
- Possess one or more ORV's

Defines criteria for classification, according to the level of development of the shoreline, watercourse, and access as:

- Wild,
- Scenic, and/or
- Recreational

SECTION 3: Guidance on designated rivers.

- (a) Lists congressionally designated rivers in the National System
- (b) Provides guidance on the establishment of boundaries for designated rivers, e.g., boundaries are limited to an average of no more than 320 acres per river mile – ½ mile corridor width (¼ mile on each side), except double that in Alaska.
- (c) Requires public Notice of Availability for river boundaries and classifications.

(d)(1) For rivers designated on or after January 1, 1986, requires preparation of a comprehensive management plan within three full fiscal years of designation. Notice of Availability and completion of plans to be published in the Federal Register.

Plans shall address:

- Resource Protection
- Development of lands and facilities
- User capacities
- Other management practices necessary to achieve purposes of the Act

Coordination:

- With land management plans for affected adjacent federal lands (typically incorporated).
- With state, local government, and interested public.

(d)(2) For rivers designated prior to January 1, 1986, all boundaries, classifications, and plans shall be reviewed for conformity with Section 3 within ten years (i.e., prior to January 1, 1996) through regular agency planning processes.

SECTION 4:

Provides directions for conducting studies, including study report requirements and processes; requires Secretarial and Presidential recommendations as to suitability; no time frame, but generally there is a three-year limit.

(a) Each study report shall include:

- The area included in the report (map and illustrations).
- The characteristics that do or do not make the area a worthy addition.
- Current status of land ownership and use.
- The reasonable foreseeable potential uses of land and water, which would be enhanced, foreclosed, or curtailed if designated.
- Proposed federal administering agency.
- Potential to share cost of administration with state and local agencies.
- Estimated cost to the government of acquisition and administration.

(b) Requires consultation with other affected federal agencies.

(c) Requires consultation with federal agencies before the Secretary of the Interior designates a state-administered river to the National System.

(d) Minimum of ¼ mile study boundary.

SECTION 5: Study Provisions.

- (a) List of congressionally authorized studies; withdraws them from mineral entry.
- (b) Study period usually three full fiscal years.
- (c) Additional study requirements – coordination with states and political subdivisions.
- (d)(1) Directs federal agencies to consider other potential WSR's in their land and water resource planning process.
- (d)(2) Specific language for the Upper Klamath River study, Oregon.

SECTION 6:

- (a) The federal government may acquire land, and interests in lands, for rivers designated via Congress with certain restrictions:
 - No more than an average of 100 acres per mile may be acquired in fee.
 - State lands may be acquired by donation/exchange only.
 - Tribal or land in a political subdivision can be acquired by consent only, so long as it is being protected for purposes of the WSR status.
- (b) Limitations on land condemnation:
 - “Fifty-Percent Rule”: If over 50 percent of lands within a WSR boundary are in public ownership (federal/state/local government), no condemnation for fee title is allowed.
 - The “Fifty-Percent Rule” does not apply when used to clear title, or to acquire conservation or use easements reasonably necessary to provide public access to resource protection.
- (c) Authority to use land condemnation in incorporated city, village, or borough is preempted when local governments have in force zoning ordinances, which protect river resources.
- (d) Exchange authority with private interests.
- (e) Transfer authority with other federal agencies
- (f) Authority to accept donations.
- (g) Use and occupancy authorization.

SECTION 7:

Restrictions on hydroelectric and water resource development projects on congressionally designated rivers, rivers added under Section 2(a)(ii) of the Act, and congressionally authorized study rivers.

- (a) Prohibits the Federal Energy Regulatory Commission (FERC) licensing of new construction for hydropower projects on designated rivers; prohibits assistance for water resources projects by other federal agencies if the project would have”
- A direct or adverse effect, or
 - Would invade or unreasonable diminish scenic, recreational, and fish and wildlife values present at the date of designation.
- (b) Similar restrictions for Section 5(a) congressionally authorized study rivers.

SECTION 8: Land Disposition.

- (a) Designated rivers: Withdraws federal lands from entry, sale, or other disposition under public land laws.
- (b) Congressionally authorized study rivers under Section 5(a): Language in Section 8(a) is applicable during the study period, which includes three years after the President sends the agency’s report to Congress with a recommendation.

SECTION 9: Mining and mineral leasing laws; valid existing rights and reasonable access to working claims recognized.

- (a) On designated rivers, exceptions subject to valid existing rights:
- Mining/leasing activities subject to regulations determined by a Secretary necessary to effectuate purposes of the Act.
 - Patent to mineral deposits and rights to surface and surface resources.
 - Withdrawal of bed/bank and ¼ mile of any wild river from mining and mineral leasing laws.

“Regulations” shall provide safeguards against:

- Pollution
- Unnecessary impairment of the scenery

- (b) For congressionally authorized study rivers under Section 5(a):
- Minerals within study area are withdrawn from appropriation under mining law for periods specified in Section 7(b).

SECTION 10:

Directs federal agencies to administer WSR’s to protect and enhance the values for which the river was designated and authorizes the federal government to enter into written agreements with state and local governments (municipalities) to jointly manage rivers, e.g., the Great Egg Harbor River, New Jersey.

- (a) Protect and enhance values for which the river was designated, i.e., ORVs, free-flowing nature, and water quality.

Primary emphasis on:

- Aesthetic
- Scenic
- Historic
- Archaeological
- Scientific features

Management plans may establish varying degrees of intensity for protection and development based on special attributes.

(b) For rivers in designated wilderness, where there is conflict between the Wilderness Act and the WSR Act, the more restrictive provisions would apply.

(c) Rivers administered by the National Park Service (NPS) are part of the National Park System and rivers administered by the U.S. Fish and Wildlife Service (USFWS) are part of the National Wildlife Refuge System.

(d) The Secretary of Agriculture is authorized to use general statutory authorities relating to national forests when managing a WSR.

(e) Encourages state and local participation in protecting congressionally designated rivers. Authorizes federal administering agencies to enter into cooperative agreements for this purpose.

SECTION 11: Cooperation/Partnerships

Authorizes the Secretary of the Interior to encourage states to consider opportunities for state and local WSR's in formulation of the State Comprehensive Outdoor Recreation Plan (SCORP) and to assist, advise, and cooperate with landowners, organizations, and governments in the management of WSR's; agencies can look outside administrative boundaries.

(b)(1) Federal assistance. The Secretary of the Interior may "assist, advise and cooperate with states and their political subdivisions, landowners, private organizations or individuals to plan, protect and manage river resources." Authority is within and outside a federally administered area and applies to rivers in the National System and other rivers.

Agreement may include limited financial or other technical assistance to encourage participation in acquisition, protection and management of river resources.

SECTION 12: Activities on federal lands.

Directs federal agencies to protect rivers in light of other policies, which may be contrary to the Act and confirms that existing rights are not abrogated; directs river administering agencies to cooperate with the Environmental Protection Agency (EPA) and appropriate state water pollution control agencies to eliminate or diminish the pollution of waters.

- (a) Other federal agencies are to take such actions to protect lands which are included, border upon, or are adjacent to, congressionally designated and authorized study rivers in accordance with the Act, paying particular attention to timber harvest, road construction, and similar activities which may be contrary to purposes of the Act.
- (b) Existing rights, privileges, or contracts may not be revoked without private party consent.
- (c) Water pollution: Cooperate with EPA and appropriate state water pollution agencies.

SECTION 13: Jurisdiction of the states.

Confirms that the jurisdiction of the state in regard to hunting and fishing is not affected; discusses water rights navigable waters, and other easements and rights of way; state rights to access to the beds of navigable rivers is unaffected.

- (a) Fish and Wildlife: Confirms state jurisdiction with regard to hunting and fishing except for no hunting zones for safety, administration, or public use.
- (b) Water rights determined by established principles of law
- (c) Reservation of waters: Federal reserved water rights are reserved at the time of designation and retain enough water to protect the values for which the river was designated:
 - For purposes specified in the Act, and
 - In quantities to accomplish those purposes
- (d) Water use management: State jurisdiction unaffected to the “extent that such jurisdiction may be exercised without impairing purposes of this Act or its administration.” (e) Interstate compacts: Not affected.
- (f) Navigability: Shall not affect existing rights of states with respect to access to beds of navigable rivers.
- (g) Easements may be granted, and rights of way may be issued, as long as they are within the policy and purposes of the Act.

SECTION 14: Easements and leases.

Allows for contributions, i.e., donations of easements and real property to non-profit groups and the federal government.

Authorizes leasing of federal lands within the corridor subject to appropriate conditions.

- (A)(a) Lease of federally acquired land.
- (A)(b) Former owner has right of first refusal.

SECTION 15: Exceptions for designated rivers in Alaska. (References the Alaska National Interest Lands Conservation Act.)

Doubles the amount of land permitted within the designated boundary, i.e., maximum of 640 acres per mile (½ mile on each side). State lands and local governments lands may not be included within the boundary, nor can private lands be surrounded by the boundary to assure access. In addition, mineral withdrawals on federal lands in Alaska cover the bed and bank and everything within ½ mile of the river.

SECTION 16: Definition of terms: river, free-flowing, scenic easement

- (a) River can be: river, stream, creek, run, kill, rill, and small lake
- (b) Free-flowing is flowing in natural condition without structural modification of the waterway; existence of minor structures is not an automatic ban.
- (c) Scenic easement is the right to control the use of land to protect river values.

SECTION 17: Authorization of appropriations for land acquisition