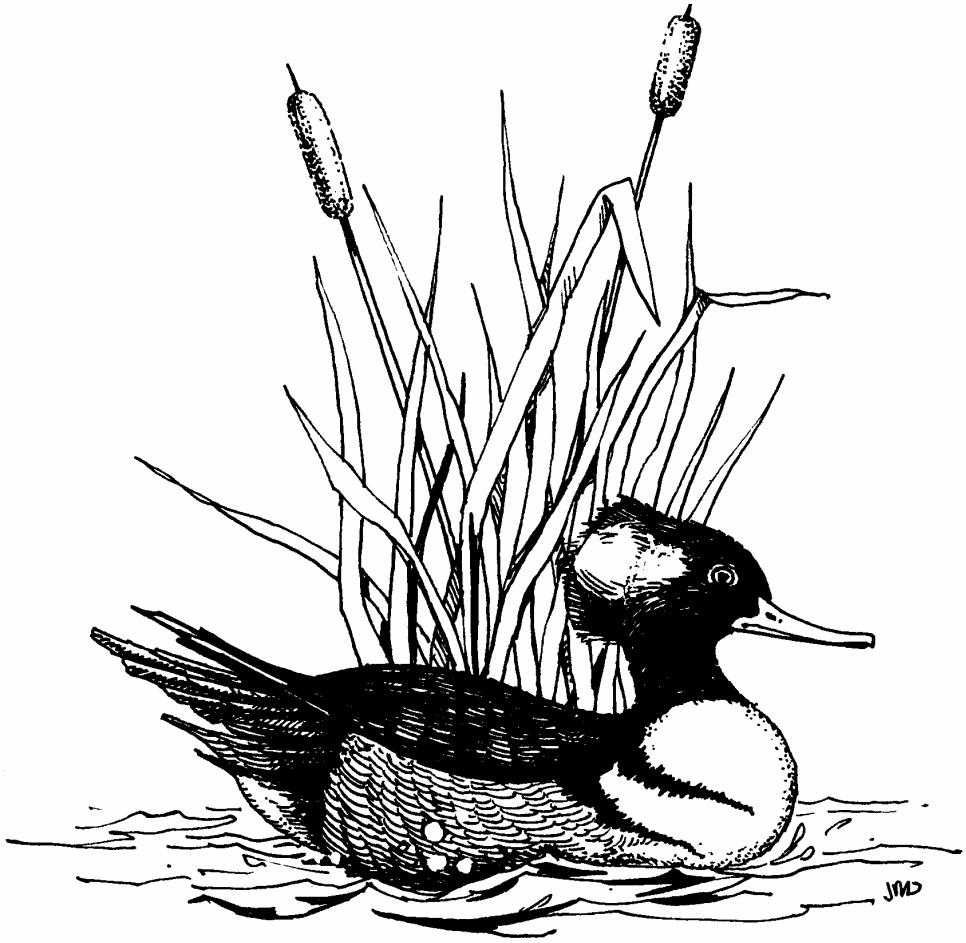
Appendix H

Water Resource Development Analysis



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Attachment H

Water Resource Development Analysis

United States Department of Agriculture	Forest Service	Washington Office	14th & Independence SW P.O. Box 96090 Washington, DC 20090-6090

Reply to: 2350 Date: October 20, 1992

Subject: Wild and Scenic Rivers: Evaluation of Proposed Activities

To: Regional Foresters

Enclosed for your information are two documents that provide the basis for an interim directive (ID) that will be issued to FSM 2354.7 within the next few weeks. The ID will clarify the agency's policy relative to requirements of the Wild and Scenic Rivers Act and implementing regulations (36 CFR Part 297) and provide a procedure to be used by all Regions in evaluating proposed activities which may affect wild and scenic rivers. We are providing the base documents now to give you advance opportunity to acquaint yourselves with the new procedures.

The enclosed documents include:

"Procedure to Evaluate Water Resources Projects." This document is based on a procedure developed and currently being tested in Region 6.

"Abstract of Relevant Legislation, Regulations, Manual and Handbook Direction, Legal Opinion, and Congressional Direction Related to Water Resources Projects." Included in this abstract are comments to guide consistent interpretation and application of agency policy.

The Wild and Scenic Rivers Act directs the Forest Service to protect and enhance the "outstandingly remarkable" scenic, recreational, geologic, fish and wildlife, historic, cultural, and other values for which each river was added to the National Wild and Scenic Rivers System. To help achieve this goal, the Act prohibits, or imposes restrictions on developments and activities which would directly and adversely affect those values.

In administration of existing or potential wild and scenic rivers, the use of instream structures for fish habitat or water quality improvement, recreation facilities, road and trail bridges, and other uses are an important management consideration. Questions and conflicting opinions as to legal limitations have arisen, primarily due to varying interpretations of the Act and related agency direction. The ID will serve to clarify the direction and provide a process for consistent application throughout the Forest Service.

The evaluation of project proposals must consider the purpose and effects of a project relative to the free-flowing nature of the river, the resource values of the river and river corridor, and the management objectives for the river. The basic standard of review is whether the project will affect conditions of free-flow and have a direct and adverse effect on the values for which the river was designated. This standard is documented in both the Act and the implementing regulations for Section 7 of the Act (36 CFR Part 297).

Because of the specific responsibility spelled out in the Act for State fisheries agencies, and the heightened concern regarding the relationship between water resource projects, such as those designed to protect or improve fish habitat or watershed conditions, and the Wild and Scenic Rivers Act, it is particularly important that you coordinate your evaluations closely with these agencies. Coordination should also be carried out with other tribal, Federal, State, and local governmental agencies and private organizations that have a direct responsibility for, or interest in, management of the river and river corridor resources.

We are currently working closely with our Office of General Counsel to review our Section 7 implementing regulations (36 CFR Part 297) to determine what revisions are needed to improve the consistency with which the provisions of the Act are being implemented. If the regulations are eventually revised, our procedures will be changed as appropriate.

Deen Lundeen of our Recreation, Cultural Resources and Wilderness Management Staff and Harv Forsgren of our Wildlife and Fisheries Staff are available to assist you and answer questions regarding these procedures.

/s/George M. Leonard

GEORGE M. LEONARD
Associate Chief

Enclosures (2)

United States Forest Washington 14th & Independence SW
Department of Service Office P.O. Box 96090
Agriculture Washington, DC 20090-6090

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/s/George M. Leonard

GEORGE M. LEONARD
Associate Chief

Enclosures (2)

PROCEDURE TO EVALUATE WATER RESOURCES PROJECTS

INTRODUCTION

This paper documents a procedure which can be uniformly and consistently applied by the Forest Service to determine whether proposed water resources projects present a direct and adverse affect to designated wild and scenic river values, and thus would be prohibited under Section 7 of the Wild and Scenic Rivers Act (the "Act"), or whether the projects should be allowed to proceed because they do not meet that threshold.

The procedure also applies to congressionally identified study rivers (Section "5a" rivers), which are afforded interim protection from projects which would affect "free-flow" characteristics in Section 7(b) of the Act. Although not protected from such projects in the Act, rivers identified for study through the land management planning process (Section "5d" rivers) are also afforded protection via agency policy (Forest Service Planning Handbook (1909.12, Chapter 8.12).

The procedure may also be applied to evaluate activities proposed outside a designated or study river corridor to determine if they result in indirect effects that "invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on the date of designation," as referenced in Section 7 (a).

This procedure paper presumes a strict interpretation of what activities would qualify as water resources projects. Water resources projects have been defined in 36 CFR Part 297 as:

> "...any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, or other construction of developments which would affect the free-flowing characteristics of a Wild and Scenic River or study river."

Section 16 (b) of the Act provides a definition of "free-flow" that assists in identification of water resources projects. It states:

> "Free-flowing, as applied to any river or section of a river, means existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway."

Therefore, if a proposed activity would affect a river's free-flow, or meet other criteria outlined in 36 CFR 297, it qualifies as a water resources project and the Section 7 procedure defined in this paper can be applied.

ISSUE

The key issue, assuming that the proposed activity is identified as a water resources project, is whether the project presents a direct and adverse affect on the values for which the river was designated or is being studied (or if a proposed activity is above or below the area, does it unreasonably diminish the scenic, recreational, or fish and wildlife values)?

Lack of a standardized procedure to analyze effects has contributed to the difficulty of making an adequate analysis of water resource projects as required by Section 7, manual direction (FSM 2354), and the Forest Service Handbook (FSH 1909.12, Chapter 8). The balance of this paper describes a standardized analysis procedure that incorporates the following principles:

a. Effects will be judged in the context of the legislation designating the affected wild and scenic river and the management objectives for the river as defined in the comprehensive river management plan. (In the case of study rivers, effects are judged in the context of relevant Forest Plan standards and guidelines and the potential affect of the activity on the river's eligibility.)

b. Water resource projects are permissible if the net effect protects or enhances values for which the river was designated or is being studied. Water resource projects are not permitted if they have a direct and adverse effect on such river values. (In the case of study rivers management activities may be carried out provided they would not result in a reduced classification recommendation, and are consistent with other relevant Forest Plan standards and guidelines.)

c. Permissible water resources projects will, to the extent practicable, maintain or enhance the free flowing characteristics of the river.

d. Water resources projects may be permitted even though they may have an effect on free flowing characteristics if:

   (1) the specific purpose of the project is to protect or enhance the values for which the river was designated, restore the natural characteristics of the river, and/or improve the water quality of the river;

   (2) associated impacts on free flowing characteristics of the river are minimized to the extent practicable; and,

   (3) the proponent and manager of the project is a federal, state, or local governmental entity.

PROCEDURE

Background: In developing this procedure we recognize that:

- It is necessary to provide a temporal and spatial context for evaluating river related proposals. The wild and scenic river management planning process should result in a clear statement of long term management goals and objectives for free-flow, water quality, riparian areas and floodplains, and the outstandingly remarkable and other significant resource values designated by statute.

- Section 7 and promulgating rules (36 CFR 297) require an analysis of effects associated with a proposed water resources project. The analysis of activities deemed acceptable must clearly demonstrate consistency with management goals and objectives.

- Management of river ecosystems should be designed to achieve management goals and objectives through natural processes and use of techniques that mimic those processes. To insure that long term goals and objectives are met, careful analysis and evaluation of these processes, time scales, and public perceptions is necessary.

- State fish and wildlife agencies share responsibility with the Forest Service for fish and wildlife resources on wild and scenic river's. Identification and evaluation of water resource projects should be coordinated with the States, recognizing and supporting attainment of state fish and wildlife management objectives to the extent they are consistent with the outstanding values for which the river was designated or is being studied.

Step-by-Step Procedure: The following procedure is designed to evaluate proposed activities within a wild and scenic river ecosystem. This procedure is not simply one of disclosure. Rather, it is a framework to identify changes in free-flow conditions and evaluate the effects associated with project proposals.

1) Establish Need and Evaluate Consistency with Management Goals and Objectives. The first step is to define the need for the proposed activity and make a *preliminary* determination whether the proposed activity is consistent with the management goals and objectives for the river. Management goals provide the standard for evaluation of effects 1/. If the activity does not evidence a compelling need or is inconsistent with the management goals and objectives or other applicable laws (e.g. Wilderness Act, Endangered Species Act, etc.), the project may not be considered further.

1/ If management goals and objectives have not been formalized through a river planning process, utilize Forest Plan standards and guidelines and any applicable state fish and wildlife, water quality, or other state agency management plans or policies consistent with identified values, to develop objectives for each of the outstanding river values.

For projects that appear needed to help attain the management goals and objectives, proceed with the following steps. The scope of analysis should be commensurate with the magnitude and complexity of the project proposal. The procedure should be accomplished via an interdisciplinary team with adequate skills for the analysis. Note that each step requires some professional judgement.

2) Define the Proposed Activity. Provide an objective description of the proposed activity. The level of detail should be proportional to the scope of the proposed project and should indicate whether the project is isolated or part of a more complex or comprehensive proposal.

a. project proponent(s)
b. purpose (clearly describe the need for the project)
c. location
d. duration of proposed activities
e. magnitude/extent of proposed activities
f. relationship to past and future management

3) Describe How the Proposed Activity Will Directly Alter Within-Channel Conditions. Address the magnitude and spatial extent of the effects the proposed activity will have on in-channel attributes. Special attention should be given to changes in features which would affect the outstandingly remarkable and other significant resource values.

a. What is the position of the proposed activity relative to the stream bed and banks?
b. Does the proposed activity result in changes in:
    1. active channel location?
    2. channel geometry (i.e. cross-sectional shape or width/depth characteristics)?
    3. channel slope (rate or nature of vertical drop)?
    4. channel form (e.g. straight, meandering, or braided)?
    5. relevant water quality parameters (e.g. turbidity, temperature, nutrient availability)?

4) Describe How the Proposed Activity Will Directly Alter Riparian and/or Floodplain Conditions. Address the magnitude and spatial extent of the effects the proposed activity will have on riparian/floodplain attributes. Special attention should be given to changes in features that would affect the outstandingly remarkable and other significant resource values.

a. What is the position of the proposed activity relative to the riparian area and floodplain?

b. Does the proposed activity result in changes in:

1. vegetation composition, age structure, quantity, vigor, etc.?
2. relevant soil properties such as compaction, percent bare ground, etc.?
3. relevant floodplain properties such as width, roughness, bank stability or susceptibility to erosion, etc.?

5) Describe How the Proposed Activity Will Directly Alter Upland Conditions. Address the magnitude and spatial extent of the effects the proposed activity will have on associated upland attributes. Special attention should be given to changes in features that would affect the outstandingly remarkable and other significant resource values.

a. What is the position of the proposed activity relative to the uplands?
b. Does the proposed activity result in changes in:

1. vegetation composition, age structure, quantity, vigor, etc.?
2. relevant soil properties such as compaction, percent bare ground, etc.?
3. relevant hydrologic properties such as drainage patterns, the character of surface and subsurface flows, etc.?

c. Will changes in upland conditions influence archeological, cultural, or other identified significant resource values.

6) Evaluate and Describe How Changes in On-Site Conditions Can/Will Alter Existing Hydrologic or Biologic Processes. Evaluate potential changes in river and biological processes by quantifying, qualifying and modeling as appropriate.

a. Does the proposed activity affect:

1. ability of the channel to change course, re-occupy former segments, or inundate its floodplain?
2. streambank erosion potential, sediment routing and deposition, or debris loading?
3. the amount or timing of flow in the channel?
4. existing flow patterns?
5. surface and subsurface flows?
6. flood storage (detention storage)?
7. aggradation/degradation of the channel?

b. Does the proposed activity affect biological processes such as:

1. reproduction, vigor, growth and/or succession of streamside vegetation?

2. nutrient cycling?
3. fish spawning and/or rearing success?
4. riparian dependent avian species needs?
5. amphibian/mollusk needs?

7) Estimate the Magnitude and Spatial Extent of Potential Off-Site Changes. Address potential off-site, or indirect effects of the proposed activity, acknowledging any uncertainties (i.e., a risk analysis).

a. Consider and document:
1. changes that influence other parts of the river system.
2. the range of circumstances under which off-site changes might occur (e.g., as may be related to flow frequency).
3. the probability or likelihood that predicted changes will be realized.

b. Specify processes involved, such as water, sediment, movement of nutrients, etc.

8) Define the Time Scale Over Which Steps 3 - 7 are Likely to Occur.

a. Review steps 3 - 7 looking independently at the element of time.
b. Consider whether conditions, processes and effects are temporary or persistent. That is, attempt to define and document the time scale over which effects will occur.

9) Compare Project Analyses to Management Goals and Objectives. Based on the analysis of steps 3-8, identify project effects on achievement, or timing of achievement, of management goals and objectives relative to free-flow, water quality, riparian area and floodplain conditions, and the outstandingly remarkable and other significant resource values.

10) Section 7 Determination. Based on the analysis of steps 3-9 document:

a. effects of the proposed activity on conditions of free-flow, including identification of the measures taken to minimize those effects.
b. any direct and adverse effects on the outstandingly remarkable and other significant resource values for which the river was designated or is being studied.
c. any unreasonable diminishing of scenic, recreational, or fish and wildlife values associated with projects above or below the area.

The determination should permit those water resource projects that are consistent with the legislation designating the affected wild and scenic river and the management objectives for the river as defined in the comprehensive river management plan, *or* in the case of study rivers, the proposed activities would not result in a reduced classification recommendation and is consistent with Forest Plan standards and guidelines. Permissible water resources projects will, to the extent practicable, maintain or en-

hance the free flowing characteristics of the river. Water resource projects that have a direct and adverse effect on designated river values or management objectives are not to be permitted.

It is important to note that water resources projects may be permitted even though they may have an effect on free flowing characteristics if:

a. the specific purpose of the project is to protect or enhance the values for which the river was designated, restore the natural characteristics of the river, and/or improve the water quality of the river;

b. the associated impacts on free flowing characteristics of the river are minimized to the extent practicable; and,

c. the proponent and manager of the project is a federal, state, or local governmental entity.

Include the Section 7 determination as part of the broader NEPA analysis of the proposed activity. See the following section for additional information on the relationship of Section 7 determinations and the NEPA process.

INCORPORATION OF SECTION 7 DETERMINATIONS IN THE NEPA PROCESS

The Code of Federal Regulations states:

"The determination of the effects of a proposed water resources project shall be made in compliance with NEPA."

The following discussion offers more specific information regarding incorporation of the Section 7 procedure into the NEPA process. It also includes information relating to the decision document and the responsible official.

A proposed water resources project may be an independent project such as watershed or fish habitat restoration or construction of a boat ramp or fishing pier, or part of a larger program that serves a variety of purposes. In either situation, the Section 7 procedure is to be completed as a separate analysis by an interdisciplinary team. For designated rivers (Section 3a) and congressionally identified study rivers (Section 5a), the Section 7 procedure would be explicitly documented in, or appended to the NEPA document with appropriate reference in the NEPA analysis. Similarly, for rivers identified for study via the land management planning process (Section 5d), an analysis as to the potential effect of a proposed project on free-flow and the outstandingly remarkable values should be incorporated, appended, or available in the analysis file.

The decision document will describe the Section 7 determination for the preferred alternative for a designated or congressionally identified study river. This determination should state whether the proposed project will affect free-flow characteristics, whether it will or will not have a "direct and adverse effect on the values for which the river was designated" (or might be added to the System), or whether proposed projects above or below the area will "unreasonably diminish" those resource values. The Section 7 evaluation may result in identification of water-resources projects which protect, restore or enhance the values for which the river was designated or identified for study. In approval of such projects, the decision notice should clearly indicate that determination.

For study rivers identified via the land management planning process (i.e. Section 5d rivers), utilize the Section 7 procedure with the decision document referencing that an analysis was conducted to evaluate the potential effect of the proposed project on free-flow and the outstandingly remarkable values. Note, that Section 7 is not required for 5d rivers, but agency policy (FSH 1909.12 8.12) provides direction to protect the free-flowing condition and outstandingly remarkable values.

The responsible official differs with the status of the river and whether or not another federal agency is involved. For proposed water resources projects on a 3a or 5a river, in which there is another federal agency "assisting by loan, grant, license or otherwise...," the Regional Forester is the responsible official (reference FSM 2354.04e). If there is no other federal agency "assistance" for a project on a 3a or 5a river, the appropriate line officer signs the decision document. Decision documents for water resources projects on a 5d river are signed by the appropriate line officer.

REGIONAL OVERSIGHT

The Regional Offices are to provide for review of the Section 7 analysis completed for proposed water resources projects. This review process should be coordinated by the Recreation staff group and involve other appropriate staff areas such as fisheries, watershed, engineering, etc. The intent of this oversight is to ensure a consistent approach to the evaluation of proposed water resources projects in wild and scenic rivers. The review is not intended to make the final decision.

SUMMARY

These procedures were developed to analyze projects that have the potential to affect the free-flowing condition and/or outstandingly remarkable values of designated and study wild and scenic river's and determine which projects are consistent with the Act by protecting, restoring, and enhancing those river values. The scope of the analysis will vary with the magnitude and complexity of the proposed activity. The procedure requires interdisciplinary analysis and application of professional judgement within the requirements of the Act.

Examples of projects that would likely be subject to Section 7 analysis include, but are limited to:

1. Log removal for recreation user safety;
2. Fisheries habitat and watershed restoration and enhancement projects;
3. Bridge and other roadway construction/reconstruction projects;
4. Bank stabilization projects;
5. Recreation facilities such as boat ramps and fishing piers;
6. Activities that require 404 permits from the Corps of Engineers.

ABSTRACT OF RELEVANT LEGISLATION, REGULATIONS, MANUAL AND HANDBOOK DIRECTION, LEGAL OPINION AND CONGRESSIONAL DIRECTION RELATED TO WATER RESOURCES PROJECTS

WILD AND SCENIC RIVERS ACT

P.L. 90-542, Section 1(b):

"It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes."

P.L. 90-542, Section 7(a):

Section 7 provides specific protection of designated and congressionally identified study rivers by prohibiting the licensing "...of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act." Additionally this section states:

"...no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration."

The section also addresses federal agency limitations on licensing or assisting in developments below or above designated or proposed W&SR's that "invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area..."

P.L. 90-542, Section 10(a):

Section 10(a) states Congressional intent for management to protect and enhance those values for which a river was designated (or is being studied). The section calls

for development of management plans with specific objectives that are based on the special values of the particular river. Specifically:

"Each component of the national Wild and Scenic Rivers System shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public uses and enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, historic, archeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on special attributes of the area."

P.L. 90-542, Section 12(a):

Section 12 sets forth broad authority for management policies on federal lands "which include, border upon, or are adjacent to, any river included in the National Wild and Scenic Rivers System or under consideration for such inclusion, in accordance with section 2(a)(ii), 3(a), or 5(a)..." directing them to "take such action respecting management policies, regulations, contracts, plans...as may be necessary to protect such rivers in accordance with the purposes of this Act."

P.L. 90-542, Section 16(b):

"Free-flowing, as applied to any river or section of a river, means existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence, however, of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion shall not automatically bar its consideration for such inclusion: *Provided*, That this shall not be construed to authorize, intend, or encourage future construction of such structures within components of the national Wild and Scenic Rivers System."

CODE OF FEDERAL REGULATIONS

36 CFR 297 - Regulations for Implementing Section 7 of the Wild and Scenic Rivers Act:

"Water resources projects" have been defined in 36 CFR 297 as:

"...any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, or other construction of developments which would affect the free-flowing characteristics of a Wild and Scenic River or study river."

"These regulations require that a determination of the direct and adverse effects of a proposed project be completed through the NEPA process."

INTERAGENCY GUIDELINES FOR ELIGIBILITY, CLASSIFICATION AND MANAGEMENT OF RIVER AREAS - September 7, 1982

Section III - Management:

"Other Resource Management Practices. Resource management practices will be limited to those which are necessary for protection, conservation, rehabilitation or enhancement of the river area resources. Such features as trail bridges, fences, water bars and drainage ditches, flow measurement devices and other minor structures or management practices are permitted when compatible with the classification of the river area and provided that the area remains natural in appearance and the practices or structures harmonize with the surrounding environment."

This section establishes a nondegradation and enhancement policy for all designated river areas. Each component of the W&SR's system is to be managed to protect and enhance the values for which the river was designated, while providing for public recreation and resource uses which do not adversely impact or degrade those values. This guideline specifically identifies three criteria for evaluation of proposed activities that are consistent with the analysis called for in Section 7 of the Act, namely: 1) compatibility with the values for which the river was designated; 2) no impact on natural appearance; and, 3) harmonize with the surrounding environment.

FOREST SERVICE MANUAL

FSM 2354.04e

"Regional Foresters shall: Determine the direct and adverse effects of water resource projects upon designated or study wild and scenic rivers, and determine, pursuant to section 7 of the Wild and Scenic Rivers Act, whether the Department of Agriculture will consent to a proposed action (36 CFR 297). This authority shall not be redelegated..."

FSM 2354.42b

"Manage wildlife and fish habitats in a manner consistent with the other recognized river attributes."

"Recommendations to State agencies concerning the management of fisheries must be consistent and in harmony with established river objectives.

"The construction of minor structures for such purposes as improvement of fish and game habitat are acceptable in wild river areas provided they do not affect the free-flowing characteristics of the river and harmonize with the surrounding environment."

The last portion of this manual direction suggests that any fish and wildlife habitat improvement project which would affect conditions of free-flow are not acceptable in wild rivers. However, the primary factor in determining the acceptability of proposed fish and wildlife habitat management projects within Wild and Scenic River corridors is whether or not they have a direct and adverse affect on the values for which the river was designated (or is being studied). Water resources projects which do not directly and adversely affect the values for which the river was designated, or is being studied, are acceptable. Those projects that are incompatible with the outstanding values of the river corridor are not acceptable.

FOREST SERVICE HANDBOOK

FSH 1909.12, Chapter 8.12

"1. To the extent the Forest Service is authorized under law to control stream impoundments and diversions, the free-flowing characteristics of the identified river cannot be modified."

"3. Management and development of the identified river and its corridor cannot be modified to the degree that eligibility or classification would be affected..."

FSH 1909.12, Chapter 8.2

"1. Standards for Wild Rivers...

d. Flood Control: No flood control dams, levees, or other works are allowed in the channel or river corridor. The natural appearance and essentially primitive character of the river areas must be maintained...

i. Structures: ...New structures would not be allowed except in rare instances to achieve management objectives (i.e. structures and activities associated with fisheries enhancement programs could be allowed.)"

"2. Standards for Scenic Rivers...

i. Structures: ...New structures that would have a direct and adverse effect on river values would not be allowed."

"3. Standards for Recreational Rivers...

i. Structures: ...New structures are allowed for both habitation and for intensive recreation use."

LEGAL OPINION

A May 1979 memorandum to the Chief from Clarence W. Brizee (Deputy Director, Forestry Natural Resources Division; USDA, OGC) provides the following interpretation, which is consistent with our current understanding:

> "With regard to water resources projects, the Wild and Scenic Rivers Act is not a blanket ban or absolute prohibition... The only activity absolutely prohibited by Section 7 is the licensing of dams and other project works by the Federal Energy Regulatory Commission under the Federal Power Act within the boundaries of a designated or study river. Other federally assisted water resources projects may be permitted. Thus, rather than being characterized by absolute prohibitions, the Act embodies a flexible approach. Section 7 establishes a procedure for making a specific determination with respect to each proposed water resources project."
>
> Mr. Brizee continues: "The evolution of Section 7 demonstrates that Congress did not intend that the Act automatically ban all developments and uses on or near a (study or designated) river. To the contrary, the legislation was specifically amended in order to provide a procedure via Section 7 for review of proposed water resources projects on a case-by-case basis."
>
> Deputy Director Brizee further states, "even though water resources projects will be reviewed on a case-by-case basis, the Act is strict as to what is allowable. This Department and the Department of the Interior have defined "water resources project" in a broad context. That is, a water resources project is any type of construction which would result in any change in the free-flowing characteristics of a particular river... This concept of water resources projects has been applied to dredge and fill permits under Section 404 of the Clean Water Act, construction of levees, removal of navigational hazards, construction of nuclear power plants, and other such diverse projects."

This memorandum also offers an interpretation of the "direct and adverse effect standard":

> "The Department of Agriculture interpreted the "direct and adverse effect" standard, and the "unreasonably diminish" standard in the context of a Section 7 determination for a nuclear power project on the banks of the Skagit W&SR. The discussion in that determination indicates that a flexible approach is possible.
>
> With regard to projects inside the designated boundary, there is no definition provided by the Act or legislative history as to what constitutes such a "direct and adverse" effect. We do not construe this section as a ban on all projects which might be built on a river proposed or designated as a component of the System. Rather, the Act contemplates that each proposed project be considered on its own merits. In making this determination, we consider the values of the river as they now exist; a "direct and adverse" effect is one which will result in marked dimunitions of the values enumerated in Section 1(b) of the Act. Also relevant to the consideration of the project's impacts is the degree to

which it blends in or is otherwise compatible with the natural qualities of the river, whether there may be a dimunition in the air and water quality, and the effects on animals and vegetation. The duration of the impact is another important consideration; long lasting or permanent impacts must be viewed more strictly than temporary or short term impacts."

CONGRESSIONAL DIRECTION

The most recent Congressional direction on management of wild and scenic rivers is associated with the Michigan Scenic Rivers Act of 1991 (H.R. 476) dated November 23, 1991. The Senate Committee on Energy and Natural Resources report on the Michigan Scenic Rivers Act states:

> "The Committee is aware of the concern expressed by some parties of the potential effect that designation of certain rivers as components of the Wild and Scenic Rivers System may have on ongoing stream restoration and improvement projects in the State of Michigan. The Committee notes the importance of these projects in restoring damaged riparian areas and improving water quality and aquatic habitat. In the Committee's view, such projects are not inconsistent with Wild and Scenic River designation, and in fact similar projects have been successfully completed on Wild and Scenic River segments throughout the nation. The Committee directs the Forest Service to develop a consistent and coordinated policy permitting the implementation of such projects within Wild and Scenic River segments in order to avoid unnecessary concern and confusion."

In similar fashion, the House Committee on Interior and Insular Affairs report on the Michigan Scenic Rivers Act states:

> "The committee has provided flexibility with regards to sea lamprey control in order that appropriate management actions can be taken consistent with the requirements of law. In keeping with sound management practices for wild and scenic rivers, the Committee believes there is appropriate flexibility in law to provide for fish and wildlife habitat and water quality improvement in a manner that will protect the values for which a river segment was designated. Some of the finest fisheries in the country are found on rivers designated as part of the National Wild and Scenic Rivers System. The Committee recognizes the importance of the fisheries on the Michigan rivers designated by this Act and is supportive of efforts to correct significant water quality, aquatic habitat or other ecological degradation caused by past human activity. The Wild and Scenic Rivers Act permits structural and non-structural techniques of fish restoration to be used as long as such activities do not have an adverse impact on the values for which such rivers are designated. Such activities consistent with this standard are occurring on wild and scenic rivers across the country. As provided for by law, the Secretary will cooperate with the state on these matters."