

Wild and Scenic Rivers Act Compliance for WSDOT Projects

Background

The Wild and Scenic Rivers Act (Act) ([16 U.S.C. 1271-1278](#)) aims to preserve selected rivers from dams and developments associated with many of the nation’s waterways. The key provision of the Act is Section 7, which directs federal agencies to protect the “free-flowing condition, water quality, and **outstandingly remarkable values**” of designated rivers and congressionally authorized study rivers (USFS 2004, p. 1).

The Act prohibits federal agencies from assisting in the construction of any water resources project with a direct and adverse effect on a **congressionally designated river corridor** or projects below, above, or on a stream tributary to a **congressionally designated river corridor** (Section 7(a)). It also includes a standard that governs water resources projects on a **congressionally authorized study river corridor** or **projects below, above, or on a stream tributary to a congressionally authorized study river corridor** (Section 7(b)). Currently, there are no rivers or river systems under “authorized” study in Washington State, therefore we will not refer to Section 7(b) further in this document. Also note that you do not need a Section 7 determination for work in a candidate river.

Determinations under Section 7(a) are made by the river-administering agency. Currently, all [Designated Wild and Scenic Rivers](#) in Washington State are administered by the U.S. Forest Service (USFS). The USFS evaluates non-hydroelectric project proposals on designated rivers, under the “direct and adverse effects” evaluation criteria and the “invade the area or unreasonably diminish” criteria for projects below, above, or on a tributary to a designated river for Section 7(a) (USFS 2004, Appendix C-E).

The table below (USFS 2004, p. 4) outlines when a determination under Section 7 is required.

Project proposed in bed or banks of a designated river or congressionally authorized study river	Project proposed in bed or banks of river below, above or on a stream tributary to a designated river or congressionally authorized study river
AND	AND
Project is proposed by a federal agency or it requires some type of federal assistance such as a permit, license, grant or loan	Project is proposed by a federal agency or it requires some type of federal assistance such as a permit, license, grant or loan
AND	AND
	Project is likely to result in effects within a designated river or congressionally authorized study river
Only when both of the above conditions exist is a determination required under Section 7	Only when all of the above conditions exist is a determination required under Section 7

Section 7 requires consultation between the USFS and the federal lead agency assisting the construction of the project. **The project's federal lead agency** (or *federally assisting agency* in the Act; e.g., Federal Highways Administration (FHWA), US Army Corps of Engineers (Corps), etc.) **is responsible to lead the coordination with the USFS on compliance with the Act**, see definitions in [36 CFR 297](#). **WSDOT is not responsible for this coordination, and therefore defers to the federal lead agency's coordination and decision-making authority.**

If coordination with the USFS is required, documentation would include analysis of any impacts the proposal would have on a designated wild and scenic river (WSR), tributary to a WSR, or WSR corridor. In these cases, the Section 7 determination would be conducted in response to draft and final environmental documents, respectively (i.e., when sufficient alternative detail and discussion of environmental consequences is available in a NEPA document). The Act encourages the federal lead agency to consult informally with the USFS early in the scoping process to avoid delays or costs associated with projects that are unacceptable under Section 7 (USFS 2004, p. 8). Final Section 7 determinations should be issued by the USFS towards the completion, but prior to the end, of the NEPA process to account for any changes in the project or analysis.

Documentation procedures

Regardless of federal lead agency, WSDOT should review whether our projects impact WSRs. Follow the process below to comply with the Act.

1. **Determine if there is potential impact to a WSR, WSR corridor, or a tributary to a WSR.**
 - a. Consult [National Wild and Scenic Rivers Systems](#) to identify WSRs or WSR corridors in your project area.
 - **River:** A flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes.
 - **River corridor:** A river and the adjacent area within the boundaries of a designated river, or a river and the adjacent area within one-quarter mile of the banks of a congressionally authorized study river (USFS, pg. 3). To identify your river's corridor boundary, please review its [Comprehensive River Management Plan](#).
 - b. Consult a watershed map to identify if your project is below, above, or on a tributary to a WSR.
 - **Tributary** (*Defined under "River"*): A flowing body of water or estuary or a section, portion, **or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes.**

NOTE: A tributary to a WSR can be anywhere upstream in the watershed, the context and intensity of the project determines the application of the Act.
 - c. Review the Wild and Scenic Rivers Act section of [Environmental Manual Section 455.04\(2\)](#).

If there is no WSR in your project area, your project is not on a tributary to a WSR, or you are outside of a WSR corridor, document this in the project file. This process is complete, **STOP** here.

If your project is on a WSR, a tributary to a WSR, or in a WSR corridor, **CONTINUE** to part d.

- d. Determine whether your project is likely to impact the river, river corridor, or tributary identified in step 1(a) ([Section 7 Flowchart](#)).
 - i. **Activities on WSRs or within a WSR corridor**
 - Review the criteria for “direct and adverse” effects to free flowing, water quality, or outstandingly remarkable values (USFS 2004, pg. 25 ([Appendix C](#))).
 - ii. **Activities on tributaries to WSRs**
 - Review the criteria for “invade the area or unreasonably diminish” scenic, recreational, or fish and wildlife values. (USFS 2004, pg. 29 ([Appendix D](#))).

If your project is likely to cause direct and adverse effects to a WSR or WSR corridor, or invade the area or unreasonably diminish scenic, recreational, or fish and wildlife values on a tributary to a WSR in your project area, document the results of d(i) or d(ii) in your project file, **CONTINUE** to step 2.

NOTE: It is the responsibility of the administering agency of the river to make the final Section 7 determination.

2. **Communicate the potential impacts to the federal lead as early in the project process as possible to avoid project delays.** The federal lead agency will take the appropriate actions to comply with Section 7 of the Act (see summary and direction below).
 - a. If the federal lead agency determines that application for a Section 7 determination is not required, **document this determination for the record. This process is complete, STOP here.**
 - b. If the federal lead agency determines application for a WSR determination is required, **follow the steps below.**

Send the information from "Q15" of [A Compendium of Frequently Asked Questions Relating to Transportation & Infrastructure Projects](#) and project information from [Wild & Scenic Rivers Act: Section 7 Appendix C or Appendix D](#) to the federal lead agency and relevant USFS District Ranger. More information may be required upon request.

- i. **If work does not meet the Section 7 evaluative standards**

Work with the design team, federal lead agency (FHWA, Corps, etc.), and the USFS to change the design. Resubmit the new design information to the USFS. Examples of design change include:

- a. Aesthetic treatments may be required if the project adversely affects scenic values.

- b. Improved design or a better location for a bridge to lessen impacts on river resources and allow better connection of the river with its floodplain.
- c. If the design cannot be changed, look for ways to avoid federal assistance.

ii. **If work meets Section 7 evaluation standards**

The design team may still consider making design changes requested or suggested by the USFS. While some design changes (e.g., increased or decreased access) may not be required to comply with Section 7 standards, their inclusion can further protect or enhance river values, ensure consistency with Section 12(a) of the Act, and capitalize on infrequent construction windows and economy-of-scale to achieve shared agency goals.

Agency Responsibility

WSDOT is not required to consult directly with the USFS on WSRs. **The federal lead agency is responsible for this consultation (36 CFR 297).** Therefore, any inconsistencies in the interpretation of the Act are the responsibility of the federal agencies to resolve and WSDOT defers to the federal lead agency's expertise to do so, as well as to follow the law as their agency determines appropriate. WSDOT should document the federal agency's decision in their project's environmental documentation.

Contact the [NEPA/SEPA program](#) for further assistance determining your Section 7 determination.

USFS Contacts

Mt. Baker District Ranger: Louis (Ted) Neff (louis.neff@usda.gov)

Snoqualmie District Ranger: Brian McNeil (brian.mcneil@usda.gov)

Darrington District Ranger: Camden Bruner (camden.bruner@usda.gov)

References

WSDOT. (2024). Environmental Manual Chapter 455: Land Use and Transportation.
<https://wsdot.wa.gov/publications/manuals/fulltext/M31-11/455.pdf>

Interagency Wild and Scenic Rivers Coordinating Council. (2018). *A Compendium of Frequently Asked Questions Relating to Transportation & Infrastructure Projects*.
<https://www.rivers.gov/sites/rivers/files/2023-01/transportation-q-a.pdf>

National Wild and Scenic River System. *National Wild and Scenic River System | Washington*.
<https://www.rivers.gov/washington>

United States Forest Service (USFS). (2004). *Wild & Scenic Rivers Act: Section 7*. Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council.
<https://www.rivers.gov/rivers/rivers/sites/rivers/files/2023-07/section-7.pdf>

Wild and Scenic Rivers, 36 CFR 297 (2024).

Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287 (1984).