

PART 2, CHAPTER 12

WILD AND SCENIC RIVERS

TABLE OF CONTENTS

12.1	OVERVIEW.....	12-1
12.1.1	Definitions	12-1
12.1.2	Federally Designated Wild and Scenic Rivers and Study Rivers.....	12-2
12.1.3	Rivers on the Nationwide Rivers Inventory	12-4
12.1.4	Florida Wild and Scenic Designation	12-5
12.2	PROCEDURE	12-6
12.2.1	Determination of Involvement	12-6
12.2.2	Federally Designated Wild and Scenic Rivers and Study Rivers.....	12-7
12.2.2.1	Coordination and Analysis	12-7
12.2.2.2	Documentation.....	12-8
12.2.2.2.1	Projects Not Involving Designated Wild and Scenic or Study Rivers.....	12-8
12.2.2.2.2	Projects Involving Designated Wild and Scenic or Study Rivers Without Impacts	12-8
12.2.2.2.3	Projects Impacting Rivers Designated as Wild and Scenic or Study Rivers.....	12-9
12.2.3	Rivers Listed on the Nationwide Rivers Inventory.....	12-10
12.2.3.1	Analysis and Coordination	12-10
12.2.3.2	Documentation.....	12-12
12.2.3.2.1	Projects Not Involving Rivers Listed on the Nationwide Rivers Inventory	12-12

12.2.3.2.2	Projects Involving Rivers Listed on the Nationwide Rivers Inventory Without Impacts.....	12-12
12.2.3.2.3	Projects Impacting Rivers Listed on the Nationwide Rivers Inventory	12-13
12.2.4	Section 4(f) Applicability.....	12-13
12.3	REFERENCES	12-14
12.4	HISTORY	12-16

LIST OF FIGURES

Figure 12-1	National Park Service Contact Information and Websites	12-17
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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 and Federal Highway Administration (FHWA) has assigned its 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 (**NEPA** Assignment). In general, FDOT's assumption includes all highway projects in Florida which source of federal funding comes from FHWA or which constitute a federal action through FHWA. **NEPA** Assignment includes responsibility 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 identifying and determining effects of federal or federally permitted transportation projects on designated Wild and Scenic Rivers, Study Rivers, or rivers listed on the Nationwide Rivers Inventory (NRI). This includes determining whether the project impacts a designated Wild and Scenic River or Study River and consultation with the National Park Service (NPS) to avoid or mitigate direct and adverse effects to these resources. Guidance is also given on determining if a river is listed on the NRI and subsequent coordination with the NPS, if necessary.

12.1.1 Definitions

Eligibility - Qualification of a river for inclusion into the National Wild and Scenic Rivers System through the determination that it is free-flowing and, with its adjacent land area, possesses at least one river-related value considered to be outstandingly remarkable. This determination is made by the NPS. (*Interagency Wild and Scenic Rivers Coordinating Council, A Compendium of Questions & Answers Relating to Wild & Scenic Rivers*).

Nationwide Rivers Inventory (NRI) - A source list of rivers which have been determined by the NPS and other federal land managing agencies as being potentially eligible for the National Wild and Scenic Rivers System (*Interagency Wild and Scenic Rivers Coordinating Council, A Compendium of Questions & Answers Relating to Wild & Scenic Rivers*). Please note, these are not the same as Study Rivers.

Outstandingly Remarkable Values (ORVs) - Values among those listed in **Section 1(b) of the Wild and Scenic Rivers Act (WSRA)** are "scenic, recreational, geological, fish and wildlife, historical, cultural, or other similar values..." Other similar values which may be considered include botanical, hydrological, paleontological, scientific, rare landscapes, or unique attractions within a river segment. The NPS uses professional judgment to

determine whether values exist to an outstandingly remarkable degree (***Interagency Wild and Scenic Rivers Coordinating Council, A Compendium of Questions & Answers Relating to Wild & Scenic Rivers***). They are resources within a river corridor worthy of special protection.

River Administering Agency - One of the four federal agencies that may be charged with administration of a component of the Wild and Scenic Rivers System. These agencies are the Bureau of Land Management (BLM), NPS, U.S. Fish and Wildlife Service (USFWS), and U.S. Forest Service (USFS). (***Interagency Wild and Scenic Rivers Coordinating Council, Wild & Scenic Rivers Act: Section 7***). For federally designated Wild and Scenic Rivers in Florida, only the NPS is a River Administering Agency.

River Corridor - A river and the adjacent area within the boundaries of a designated Wild and Scenic River, or a river and the adjacent area within one-quarter mile of the banks of a congressionally authorized Study River.

Study River - a river and the adjacent area within one quarter mile of the banks of the river which is designated for study as a potential addition to the National Wild and Scenic River System pursuant to ***Section 5(a) of the WSRA (36 CFR §297.3)***.

Water Resources Project - any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the ***Federal Power Act (16 U.S.C Chapter 12)*** or other construction of developments which would affect the free-flowing characteristics of a Wild and Scenic River or Study River. Water resources projects may also include dams, water diversion projects, fisheries habitat and watershed restoration/enhancement projects, bridges and other roadway construction/reconstruction projects, bank stabilization projects, channelization projects, levee construction, recreation facilities, and activities that require a 404 permit from the U.S. Army Corps of Engineers (USACE) (***Interagency Wild and Scenic Rivers Coordinating Council, Wild & Scenic Rivers Act: Section 7***).

Wild and Scenic River - a river and the adjacent area within the boundaries of a component of the National Wild and Scenic Rivers System pursuant to ***Section 3(a) or 2(a) (ii) of the WSRA (36 CFR § 297.3)***.

12.1.2 Federally Designated Wild and Scenic Rivers and Study Rivers

The ***Wild and Scenic Rivers Act (WSRA), 16 U.S.C. 1271 et seq.***, as amended, 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 in free-flowing condition” for the enjoyment of present and future generations.

Wild and Scenic Rivers are designated by Congress or through an administrative action by the Secretary of the Interior to include a river already protected by a state upon the

request of that state's governor. Boundaries of designated segments generally average one-quarter mile on either bank to protect river-related values, and may include tributaries. Each river is administered by a federal River Administering Agency. The NPS is the River Administering Agency for the two designated Wild and Scenic rivers in Florida.

Designated Wild and Scenic Rivers create the National Wild and Scenic Rivers System and are classified, designated, and administered as one of the following:

1. **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.
2. **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.
3. **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.

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. The responsible agency/federal River Administering Agency is the NPS, however it is considered state-administered and Jonathan Dickinson State Park is identified as the managing agency. This river segment is located in FDOT District 4.
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. The Southeast Regional Office of the NPS is identified as the responsible/federal River Administering Agency and the managing agency. This river segment is located in FDOT District 5.

The **WSRA** also identifies Study Rivers for possible inclusion in the Wild and Scenic Rivers System. These rivers, along with others identified since creation of the **WSRA** have been authorized by congress to be studied further for potential inclusion into the Wild and Scenic Rivers System. These Study Rivers are protected for three years from the date the President forwards the study report to Congress and are also protected during the multi-year study phase prior to formal submission of the report.

The only Study River located in Florida is the St. Marys River, which is located in FDOT District 2. The study area included the river from the headwaters of the North prong at

river mile 125.8 downstream to the confluence of Bells River at river mile 12. It was found to be not suitable for designation in 1995. Although the study report was never transmitted to Congress, the **WSRA** provides no expiration period in a case where the study report is not transmitted. Based on the law and current policy, the St. Marys remains in permanent Study River status, and is subject to review and determination under **Section 7(a)** of the **WSRA**.

Section 7(a) of the **WSRA**, along with the implementing rules, requires that no federal license, permit, or other authorization (federal assistance) be issued for a water resources project (defined in [Section 12.1.1](#)) which would have a direct and adverse effect on the values for which a designated Wild and Scenic River or Study River was established, namely its free-flowing condition, water quality, and ORVs. Some water resources projects that are related to transportation projects include, but are not limited to: transmission lines and pipelines; bridge and other roadway construction/reconstruction projects; water conduits; bank stabilization projects; channelization projects; levee construction; reservoirs; recreation facilities, such as boat ramps or fishing piers; or dredge and fill projects that require a federal permit. Federal assistance includes federal funding of projects. The “direct and adverse” standard applies to projects within the river corridor and may apply to abutting lands that contribute to the ORVs.

Section 7(a) also precludes federal assistance to projects outside the river corridor but on the same river, or on a tributary of a designated Wild and Scenic River that have been determined to “invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on the date of designation...”. The “invade or unreasonably diminish” standard applies to projects below (downstream), above (upstream), or on a stream tributary to the boundaries. This section provides the same protection to Study Rivers, except that the qualifying word “unreasonably” does not appear before “diminish”. The effect is to provide greater protection for study rivers during the short term study process. See [Section 12.2.2](#) for guidance on how this determination takes place during the **NEPA** process.

12.1.3 Rivers on the Nationwide Rivers Inventory

The NRI is a listing of rivers (or river segments), which are considered to meet eligibility criteria for the National Wild and Scenic River System based on their free-flowing status and resource values. The NRI is maintained and revised as necessary by the NPS. Listing on the NRI, or any other source list, does not represent an official determination of eligibility, and conversely, absence does not indicate a river’s ineligibility.

Rivers on the NRI are afforded some protection from the adverse impacts of federal projects until they can be studied in detail. The NRI was compiled to fulfill **Section 5(d)(1) of the WSRA’s** mandate that federal agencies consider impacts on potential Wild and Scenic Rivers in all agency “planning for the use and development of water and related land resources.” Under a **Presidential Directive issued in 1979**, each federal agency, as part of its normal planning and environmental review processes, is required to take care to avoid or mitigate adverse effects to rivers in the NRI. As part of the environmental

process, consultation with the NPS is required prior to taking actions which could effectively foreclose wild, scenic, or recreational river status on rivers in the NRI.

12.1.4 Florida Wild and Scenic Designation

A segment of the Myakka River in Manatee, Sarasota, and Charlotte Counties is designated as a Florida Wild and Scenic River by **258.501, Florida Statutes, Myakka River Wild and Scenic Designation and Preservation Act** because of its outstandingly remarkable ecological, fish and wildlife, and recreational values which are unique in the State of Florida. This segment (river area) includes the corridor of land surrounding and beneath the Myakka River between river mile 7.5 and river mile 41.5 together with a corridor including the maximum upland extent of wetlands vegetation as delineated by the Florida Department of Environmental Protection (FDEP). This segment is located in FDOT District 1, between State Road 780 in Sarasota County and the Sarasota-Charlotte County line.

The **Myakka River Wild and Scenic River Rule, Chapter 62D-15, Florida Administrative Code (F.A.C.)** implements a regulatory program that includes a permit program to protect and enhance the resource values identified in the **Myakka River Wild and Scenic River Management Plan**. Activities within the river area, which may have adverse impacts on resource values are regulated by FDEP Division of Recreation and Parks and listed in **Chapter 62D-15, F.A.C.** A Myakka Wild and Scenic River permit is required under **62D-15.006, F.A.C.** for renovating, replacing, or expanding facilities required for utilities, bridges or roads as well as constructing or creating after the effective date of the rule, utility, bridge or road crossings in unimpacted areas. The standards for issuance or denial of a Myakka River permit is that, “no permit shall be issued unless the department finds that the proposed activity will not adversely impact resource values in the river area”.

The **Myakka River Wild and Scenic Designation and Preservation Act** also designates a Wild and Scenic Protection Zone which includes a corridor of uplands surrounding the river area which extends 220 feet landward from the river area. This area is managed by local governments to ensure compatibility of land development within the zone. Activities such as construction and development, earthmoving, onsite sewage disposal systems, vegetation removal, tree removal and wetland impacts within this zone may be prohibited by the **Sarasota County Consolidated Myakka River Protection Ordinance 2008-002** and **City of North Port Myakka River Protection Zone Ordinance 2008-36**.

If an FDOT project is located near this segment of the Myakka River, a Myakka Wild and Scenic River permit from the FDEP will be required. Districts will coordinate with local governments as appropriate. Any coordination with FDEP or local governments should be documented in the Environmental Document.

12.2 PROCEDURE

12.2.1 Determination of Involvement

Projects with federal (FHWA) funding or federal actions (federal projects), as well as projects requiring federal permits need to be reviewed for potential impacts to Wild and Scenic Rivers, Study Rivers, and rivers on the NRI. FDOT projects that are not federal projects, with no anticipated federal permits, do not require Wild and Scenic River project review, but should be given careful consideration towards avoiding adverse environmental impacts.

It is the responsibility of the District to determine whether a project involves a designated Wild and Scenic River, Study River, or a river listed in the NRI, as early as possible in the project development process. There is involvement with a Wild and Scenic River or Study River if project activities are located within the river corridor (at within one quarter mile of the banks), across, or adjacent to (upstream, downstream, or on a tributary) the designated river segment. There is involvement with a river on the NRI if a project is located within the vicinity of the NRI segment.

Involvement is often determined during the Efficient Transportation Decision Making (ETDM) process where qualifying projects are entered into the Environmental Screening Tool (EST) by the ETDM Coordinator ([ETDM Manual, Topic No. 650-000-002](#)). The presence of Wild and Scenic Rivers, Study Rivers, or rivers on the NRI should be described in the Preliminary Environmental Discussion (PED) under Special Designations. This information should be included in the Wild and Scenic Rivers section.

During the Project Development and Environment (PD&E) Study, 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 Resources.” Comments by the NPS are especially important.

Detailed evaluations are generally not warranted for projects not qualifying for ETDM screening; however, the District must determine if the project involves a river segment designated as a Wild and Scenic River, Study River, or a river listed in the NRI. These river segments can be delineated and identified using the Area of Interest (AOI) tool in the EST. Mapping tools are also available on the National Wild and Scenic Rivers System and NPS NRI websites. The NPS NRI website also includes a link to other research sources for NRI rivers. See [Figure 12-1](#) for links to these websites. No involvement with designated Wild and Scenic Rivers, Study Rivers, or rivers listed in the NRI should be documented in the Environmental Document according to [Section 12.2.3.2.1](#), and no further action is required.

If the project involves a Wild and Scenic River or Study River, consultation is needed with OEM. Through coordination, OEM may assist with impact determination, or recommend a change in Class of Action (COA). If the project may adversely affect a river segment designated as a Wild and Scenic River, Study River, or listed in the NRI, it **cannot** be

classified as a Type 1 Categorical Exclusion (CE). A Type 2 CE, Environmental Assessment (EA), or an Environmental Impact Statement (EIS) may be required, depending on the significance of the effects. If an EIS is necessary on projects that involve rivers designated as a Wild and Scenic River or as Study River, or affect a river listed on the NRI, FDOT should request NPS to be a Cooperating Agency.

12.2.2 Federally Designated Wild and Scenic Rivers and Study Rivers

12.2.2.1 Coordination and Analysis

For federal projects involving either a designated Wild and Scenic River or Study River, consultations with the NPS and managing agency must be conducted in accordance with **Section 7** of the *WSRA (Interagency Wild and Scenic Rivers Coordinating Council: Wild & Scenic Rivers Act: Section 7, 2004)*. The NPS will provide direction on the scope of data and analysis needed for their effects determination. Coordination with the NPS and other interested parties should occur early in the planning process to avoid or greatly minimize possible adverse consequences and to avoid delays or costs associated with projects that are unacceptable under **Section 7**. Establishing this contact is especially important for Wild and Scenic Rivers, or Study Rivers with existing transportation systems (or those with potential for expansion) within the river corridor. See [Figure 12-1](#) for NPS contact information. There is no way to draw a clear line establishing a threshold for when a project may have an adverse effect on wild and scenic river values. Critical factors to consider are 1) the size of a river, 2) the amount and types of existing development, and 3) the outstandingly remarkable values of the river, whether the proposed project is within or outside the designated river or a congressionally authorized Study River. Therefore, projects that involve Wild and Scenic Rivers or Study Rivers (regardless of COA) should be coordinated with the NPS. River managers will provide input for the environmental analysis if requested and may recommend measures to eliminate adverse effects.

For minor activities, a simple email from the NPS will suffice to document that there is no adverse effect. Other times, a more formal adverse effects determination will be conducted. During the PD&E Study, the District conducts analysis of potential impacts the project would have on a designated Wild and Scenic River or Study River. For each alternative under consideration, the environmental analysis will identify the potential effects on the natural, cultural and recreational values of the designated Wild and Scenic River or Study River. If the NPS determines any of the alternatives could adversely impact the values for which a river was designated, or foreclose options to designate a congressionally authorized Study River, those alternatives cannot be selected without elimination of adverse effects.

The **NEPA** analysis in itself does not substitute for a **Section 7** Determination by the NPS. The NPS is responsible for conducting the **Section 7** analysis and making a determination under the statute. A **Section 7** Determination is required when:

1. A federal project is proposed in the bed or banks of a designated Wild and Scenic River or congressionally authorized Study River, or

2. A federal project is proposed in the bed or banks of river below (downstream), above (upstream) or on a stream tributary to a designated Wild and Scenic River or congressionally authorized Study River **and** the project is likely to result in effects within a designated Wild and Scenic River or congressionally authorized Study River.

12.2.2.2 Documentation

As appropriate, the Environmental Document will document involvement with a Wild and Scenic River or Study River and include the results of coordination with the NPS and managing agency. If applicable, this should include discussion of avoiding or mitigating impacts. In this case, the final Environmental Document should identify measures that will be included in the Preferred Alternative to avoid or mitigate such impacts.

12.2.2.2.1 Projects Not Involving Designated Wild and Scenic or Study Rivers

Documentation for projects not involving rivers designated as Wild and Scenic or Study Rivers is as follows:

Type 1 CE: In the Wild and Scenic Rivers section of the ***Type 1 Categorical Exclusion Checklist***, identify that the project does not involve a river designated as a Wild and Scenic or Study River.

Type 2 CE: Select “not present” on the Wild and Scenic Rivers section of the ***Type 2 Categorical Exclusion Determination Form***.

EA or EIS: Identify that the project does not involve a Wild and Scenic River or Study River and clearly state that the ***WSRA*** does not apply to this project. Clarify that project activities are not located within the river corridor (including within one quarter mile of the banks), across, or adjacent to (upstream, downstream, or on a tributary) the designated river segment. However, the scope of a study report on impacts to a river corridor is not limited to a quarter mile from the ordinary high water mark on each side of the river.

12.2.2.2.2 Projects Involving Designated Wild and Scenic or Study Rivers Without Impacts

Documentation for projects involving rivers designated as Wild and Scenic or Study Rivers which will have no impacts on the river, is as follows:

Type 1 CE: In the Wild and Scenic Rivers section of the ***Type 1 Categorical Exclusion Checklist***, identify the name of the river and in the comment box, summarize results of coordination with OEM and the NPS. Identify that there will be no direct or adverse effects on the values for which the river was designated. Correspondence with NPS should be added to the project file in the StateWide Environmental Project Tracker (SWEPT).

Type 2 CE: Select “present” and then “not impacted” on the **Type 2 Categorical Exclusion Determination Form** for the Wild and Scenic Rivers category. Select Federally Designated Wild and Scenic River or Study River and identify the name of the river. This section identifies that there will be no direct or adverse effects on the values for which the river was designated. In the comment box include details to support this determination and identify if there are any other protected rivers present in the project limits. Correspondence, or an NPS **Section 7** Determination should be added as a Technical Material in the project file in SWEPT.

EA or EIS: The Wild and Scenic Rivers section should identify the name of the river or river segment that is designated as a Wild and Scenic River or Study River, identify if it is a Wild and Scenic River or Study River, and discuss the results of the analysis and coordination with the NPS. This section should identify that there will be no direct or adverse effects on the values for which the river was designated. NPS and managing agency correspondence, and the NPS **Section 7** Determination should be included in the Appendix along with appropriate information in the Comments and Coordination section.

12.2.2.2.3 Projects Impacting Rivers Designated as Wild and Scenic or Study Rivers

For projects with potential impacts to rivers designated as Wild and Scenic Rivers or Study Rivers , the following areas should be assessed and included in the summary in the Wild and Scenic Rivers section of the **Type 2 Categorical Exclusion Determination Form**, or the Wild and Scenic Rivers section of the EA, or EIS.

Identify the name of the river and/or segment of the river, and identify whether it is a Wild and Scenic, or Study River. Address comments submitted by the NPS, managing agency, and other appropriate agencies and include the reference letters in the Appendix, or in the project file. NPS completed **Section 7** Determination should be included in, or appended to, the project’s Environmental Document.

For each alternative under consideration, identify the potential adverse effects through coordination with the NPS. Examples of adverse impacts would be:

1. Alteration of free-flowing nature of river,
2. Alteration of the setting,
3. Deterioration of water quality, or
4. An increase in the degree of activity from the project or otherwise causing visual, noise or air quality impacts on the river corridor that would conflict with the values of a wild, scenic, or recreational river.

The final Environmental Document should identify measures that will be included in the Preferred Alternative to avoid or mitigate impacts.

12.2.3 Rivers Listed on the Nationwide Rivers Inventory

12.2.3.1 Analysis and Coordination

If the project involves a river on the NRI, further analysis is needed. The effect of proposed developments within the river corridor should be assessed in terms of severity of the effect and extent of area affected. Developments outside the river corridor which would cause visual, noise, or air quality impacts on the river corridor should also be examined.

Only proposed new construction or proposed expansion of existing developments need be considered in assessing impacts. Repair or rehabilitation of existing structures would not have a negative impact, except if the action would result in substantial expansion of the facility or if the construction process itself would cause an irreversible impact on the environment. These types of projects may involve rivers on the NRI, but will not affect the river segment. For example, repaving an existing bridge over an NRI river segment is unlikely to impact the river. If the project will not affect an NRI river, provide documentation in the Environmental Document ([Section 12.2.3.2.2](#)), and no further action is necessary.

If the project may affect the river, then the first step is to determine if there will be an adverse effect on the natural, cultural or recreational values of the NRI segment. If it is unclear whether or not a project will adversely affect an NRI river segment, the NPS can provide technical assistance.

Any action which could alter the river segment's ability to meet the eligibility and classification criteria for inclusion in the National System should be considered an adverse impact. Adverse effects on NRI rivers may occur under conditions which include, but are not limited to:

1. Destruction or alteration of all or part of the free-flowing nature of river;
2. Introduction of visual, audible, or other sensory intrusions which are out of character with the river or alter its setting;
3. Deterioration of water quality; or
4. Transfer or sale of property adjacent to an NRI river without adequate conditions or restriction for protecting the river and its surrounding environment.

If a project, including one or more alternatives, could have an adverse effect on an NRI river, an EA or an EIS must be prepared, depending on the significance of impacts. NPS staff is available to assist in determining the significance or severity of the effects in connection with the project.

Guidance on determining whether the project could have adverse effects is provided in the ***Guide for Identifying Potential Adverse Effects***, which is appended to the ***Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory***.

If the project could have an adverse effect on the natural, cultural or recreational values of the NRI, or effectively downgrade any portion of the NRI segment, coordination with NPS is required. The ***Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory*** document identifies types of developments that generally require consultation with NPS because of the potential for adverse effects. Examples of the developments include: small bulkhead, clearing and snagging, drainage canal, culvert or outfall, rip-rap, bank stabilization or erosion control structure, small reservoir, increase in commercial navigation, dredging or filling, road, railroad, building (any type), pipeline, transmission line, bridge or ford, water well, recreation area, and change in flow regime.

The next step is to determine whether the proposed action could foreclose options to classify any portion of the NRI segment as wild, scenic, or recreational river areas. A project such as repaving is not likely to do that; however, something like a bridge replacement, concrete boat ramp, riprap, even lighting could. NPS may assist in determining whether any of the alternatives under consideration would foreclose designation by providing an analysis of the impacts on natural cultural and recreational values.

The ***Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory*** document identifies types of development that are most likely to cause adverse effects if constructed adjacent to or in close proximity to an NRI river. Examples include a major highway, impoundment, channelization, airport, or railroad yard. The developments identified almost always require consultation with NPS because: 1) effects are likely to conflict with the values of a potential wild, scenic or recreation river and 2) effects could be severe enough to foreclose designation of the affected river segment.

The last step is to incorporate mitigation/avoidance measures in the project to the maximum extent feasible within FDOT's authority. NPS may also assist in developing appropriate avoidance/mitigation measures. FDOT must avoid or mitigate projects that could foreclose the river from potential Wild and Scenic designation at some point in the future.

To coordinate with NPS, arials depicting alternatives including conceptual right of way (ROW) limits will be submitted for review and comment to the NPS. See NPS contact information in [Figure 12-1](#).

The letter should include 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 should respond to the request within 30 days. Any responses or comments received should be resolved. There are times when this may require close coordination with the NPS for certain projects where there may be either a physical or visual intrusion

of the proposed project on the river. It is FDOT's responsibility to ensure that effects to NRI rivers are avoided or mitigated. Instructions on the consultation process with NPS are available in the ***Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory*** and on the NPS NRI website ([Figure 12-1](#)). In all cases, the responses, comments and resolutions are included and discussed in the Wild and Scenic Rivers section of the Environmental Document, as appropriate ([Section 12.2.3.2](#)). If NPS does not respond to a request for assistance within 30 days, proceed with preparation of the Environmental Document. Even where NPS has been unable to comment on the Environmental Document, FDOT is still obligated to avoid or mitigate projects that could foreclose the river from potential Wild and Scenic designation at some point in the future.

12.2.3.2 Documentation

As appropriate, the Environmental Document will document involvement with a river listed on the NRI and include the results of any coordination with the NPS.

12.2.3.2.1 Projects Not Involving Rivers Listed on the Nationwide Rivers Inventory

Documentation for projects not involving rivers included on the NRI, is as follows:

Type 1 CE: In the Wild and Scenic Rivers section of the ***Type 1 Categorical Exclusion Checklist***, identify that the project will not involve a river on the NRI.

Type 2 CE: Select "not present" on the Wild and Scenic Rivers section of the ***Type 2 Categorical Exclusion Determination Form***.

EA or EIS: Identify that the project is not located within the vicinity of an NRI segment and clearly state that the ***WSRA*** does not apply to this project.

12.2.3.2.2 Projects Involving Rivers Listed on the Nationwide Rivers Inventory Without Impacts

Documentation for projects involving rivers included on the NRI which will have no impacts on the NRI river segment, is as follows:

Type 1 CE: In the Wild and Scenic Rivers section of the ***Type 1 Categorical Exclusion Checklist***, identify that the project will involve, but will not affect a river segment on the NRI. In the comment box identify the name of the river and include details to support this determination. Any correspondence with NPS should be added to the project file in SWEPT.

Type 2 CE: Select "present" and then "not impacted" on the ***Type 2 Categorical Exclusion Determination Form*** for the Wild and Scenic Rivers category. Select Nationwide Rivers Inventory and identify the name of the river. This section should identify that there will be no direct or adverse effects on the natural, cultural, or recreational values

of the NRI River segment. In the comment box include details to support this determination and identify if there are any other protected rivers present in the project limits. Any correspondence with NPS should be added as a Technical Material in the project file in SWEPT.

EA or EIS: The Wild and Scenic Rivers section should identify the name of the river that is listed in the NRI and identify it as an NRI river. This section should summarize the analysis and discuss any coordination with the NPS. This section should identify that there will be no direct or adverse effects on the natural, cultural, or recreational values of the NRI River segment. Any NPS correspondence should be included in the Appendix along with appropriate information in the Comments and Coordination section.

12.2.3.2.3 Projects Impacting Rivers Listed on the Nationwide Rivers Inventory

Documentation for projects with potential impacts to rivers on the NRI is as follows:

Type 1 CE: In the Wild and Scenic Rivers section of the *Type 1 Categorical Exclusion Checklist*, identify that the project will affect a river on the NRI, but will not have an adverse effect on the natural, cultural, or recreation values of the NRI river segment. Identify the name of the river in the text box and include details to support this determination. Any correspondence with NPS should be added as a Technical Material in the project file in SWEPT. If the project will have an adverse effect on the on the natural, cultural, or recreation values of the NRI river segment, coordination with the NPS is required and the project cannot be processed as a Type 1 CE.

Type 2 CE, EA, EIS: The following should be included in the summary in the Wild and Scenic Rivers section of the *Type 2 Categorical Exclusion Determination Form* or the Wild and Scenic Rivers section of the EA or EIS. Identify the name of the river and identify that the river is listed on the NRI. Identify any adverse impacts on natural, cultural, and recreational values. Address comments submitted by the NPS and other appropriate agencies and reference letters included in the Appendix, or in the project file. If applicable, describe avoidance or mitigation to avoid impacts that could foreclose the river from potential Wild and Scenic designation at some point in the future.

12.2.4 Section 4(f) Applicability

Publicly-owned waters of designated Wild and Scenic Rivers, Study Rivers, or NRI rivers may be protected by **Section 4(f)** based upon their designated functions or the designated functions adjacent to and within sections of the designated river. Publicly owned lands in the immediate proximity of such rivers may also be protected by **Section 4(f)**, depending on the ownership and, when publicly owned, the manner in which they are administered by the federal, state, or local government managing the land. Designation under the *WSRA* does not in itself create a **Section 4(f)** resource. However, ORVs often include consideration of surrounding areas or areas within the river 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 designated as public parks, recreation areas, wildlife and waterfowl refuges, and historic and archaeological sites. Therefore, during the consultations with the NPS for projects which are within, across, or adjacent to rivers designated as Wild and Scenic, Study Rivers, or 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, consultations with the official of the agency having jurisdiction over the property in question, the NPS, and other appropriate agencies will be needed to evaluate and resolve potential alterations to the protected functions of the river and the river corridor. 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. Includes Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory and Guide for Identifying Potential Adverse Effects.
<https://www.nps.gov/subjects/rivers/upload/Council-on-Environmental-Quality.pdf>
- City of North Port Myakka River Protection Zone Ordinance 2008-36.
[http://myakkarivermanagement.org/Files/MRWSMP/Appendix%20K%20-%20Ord08-36-MyakRProtZone\[1\].pdf](http://myakkarivermanagement.org/Files/MRWSMP/Appendix%20K%20-%20Ord08-36-MyakRProtZone[1].pdf)
- FHWA, 2012. Section 4(f) Policy Paper. July 20, 2012.
<https://www.environment.fhwa.dot.gov/4f/4fpolicy.asp>
- FDEP and South Florida Water Management District, Loxahatchee River National Wild and Scenic River Management Plan, Plan Update 2010.
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- FDOT, Efficient Transportation Decision Making Manual, Topic No. 650-000-002.
<http://www.fdot.gov/environment/pubs/etdm/etdmmanual.shtm>
- Interagency Wild and Scenic Rivers Coordinating Council, An Introduction to Wild and Scenic Rivers, November 1998. <https://www.rivers.gov/documents/wsr-primer.pdf>
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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>

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Memorandum of Understanding 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>

Myakka River Wild and Scenic River Management Plan. <http://myakkarivermanagement.org/MRWManagementPlan.htm>

Myakka River Wild and Scenic River Rule, Chapter 62D-15, Florida Administrative Code (F.A.C.). <http://myakkarivermanagement.org/Files/Wild%20and%20Scenic%20River%20Rule.pdf>

NPS Southeast Regional Office, St. Marys River Wild and Scenic River Study, Florida and Georgia, Final Report, March 1999

NPS Southeast Support Office, Wekiva River Rock Spring Run & Seminole Creek Wild and Scenic River Study, June 1999

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

Sarasota County Consolidated Myakka River Protection Ordinance 2008-002. <http://myakkarivermanagement.org/Files/MRW SMP/Appendix%20J%20-%202008-002.pdf>

Section 258.501, F.S., Myakka River Wild and Scenic Designation and Preservation Act. <http://myakkarivermanagement.org/Files/Myakka%20Wild%20and%20Scenic%20Designation%20and%20Preservation%20Act%20258%20501.pdf>

Title 16 U.S.C. Chapter 28, Wild and Scenic Rivers. <http://uscode.house.gov/view.xhtml?jsessionid=72C5E2A8FB942B854E70859F751839DB?req=granuleid%3AUSC-prelim-title16-chapter28&saved=%7CZ3JhbnVsZWIKOIVTQy1wcmVsaW0tdGI0bGUxNi1zZWN0aW9uMTI3OA%3D%3D%7C%7C%7C0%7Cfalse%7Cprelim&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

12.4 HISTORY

3/15/2004, 1/8/2008, 8/15/2016, 6/14/2017: NEPA Assignment and re-numbered from Part 2, Chapter 23, 1/14/2019

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Websites:

National Wild and Scenic Rivers System website: <https://www.rivers.gov/index.php>

Nationwide Rivers Inventory website: <https://www.nps.gov/subjects/rivers/nationwide-rivers-inventory.htm>

Figure 12-1 National Park Service Contact Information and Websites