

An Introduction to Wild & Scenic Rivers

*A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council
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November 1998
Revised: February 2019



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BACKGROUND

Our nation's rivers have always served as arteries of commerce and industry. From navigational channels and a source of power to turn gristmills to providing drinking water, hydroelectric power, irrigation water for croplands and a carrier of waste products, our rivers have facilitated economic development. Much development also occurred in floodplains. The inevitable flooding led to major public works projects to prevent or mitigate flood damage through diversion, channelization and construction of dams and levees. Many miles of river and associated natural values were lost or changed forever.

ESTABLISHING A SYSTEM

By the 1960's, there was sufficient concern over the seemingly inexorable loss of free-flowing rivers that Congress decided to intervene. The result was passage of legislation to preserve forever in a free-flowing condition some of the nation's most precious rivers. This legislation—the Wild and Scenic Rivers Act (Act)—was signed into law as Public Law 90-542 on October 2, 1968. Section 1(b) of the Act expresses Congressional policy for America's rivers:

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 conservation purposes.

To accomplish this goal, Congress established a National Wild and Scenic Rivers System (National System). To qualify, a river or river segment must be in a free-flowing condition and must be deemed to have one or more “outstandingly remarkable” scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values. There were eight inaugural components—the Middle Fork of the Clearwater and the Middle Fork of the Salmon in Idaho, the Eleven Point in

Missouri, the Feather in California, the Rio Grande in New Mexico, the Rogue in Oregon, the St. Croix in Minnesota and Wisconsin and the Wolf in Wisconsin.

A majority of the initial components were western rivers flowing across federally owned lands, a pattern which continues today, but which does have numerous exceptions.

EXPANDING THE SYSTEM

Congress created two mechanisms in the Act for the expansion of the National System. One was to authorize additional rivers for study as potential additions to the National System. Initially, 27 rivers were authorized for study by either the Secretary of Agriculture or the Secretary of the Interior. The appropriate Secretary conducts a study, with the report and recommendation forwarded to Congress by the President. Congress then decides whether to pass a law adding the river to the National System. Rivers may also be added to the National System at the initiative of states. States are encouraged to participate by first protecting rivers in a state system and then applying to the Secretary of the Interior for inclusion in the National System through Section 2(a)(ii). For a river in a state system to be designated by the Secretary of the Interior, it must meet the same eligibility criteria as congressionally designated rivers, and the state and/or local units of government must assure the Secretary of the Interior that they will protect the free flow and outstandingly remarkable values of the river.

By the beginning of 2019, Congress had designated a total of 192 rivers into the National System, and the Secretary of the Interior had designated another 17 at the requests of governors. It should be noted that designations do not always include an entire river, but they do often include tributary streams. Some 144 rivers have been authorized for study; not all of the studies have been completed.

In recent years, a large number of designations have resulted from a provision of the Act which was little noticed originally. This is Section 5(d)(1) which requires that, "In all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national wild, scenic and recreational river areas, and all river basin and project plan reports submitted to the Congress shall consider and discuss any such potentials." The Bureau of Land Management (BLM) and the U.S. Forest Service (USFS) have identified large numbers of rivers eligible for the National System while conducting their comprehensive land management planning processes. These have resulted in multiple designations in several states—Oregon (40), Michigan (14) and Arkansas (8). The National Park Service (NPS) also has identified eligible rivers in National Park System units.

HOW THE SYSTEM PROTECTS RIVERS

Protection from Federal Activities

The heart of river protection, and the essence of the Act, is protection of free-flowing character. Free-flowing is defined in the Act as “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 in the national wild and scenic rivers system shall not automatically bar its consideration for such inclusion . . .” To protect free-flowing character, the Federal Energy Regulatory Commission (which licenses nonfederal hydroelectric projects) is not allowed to license construction for dams, water conduits, reservoirs, powerhouses and transmission lines, or other project works on, or directly affecting, wild and scenic rivers. Other federal agencies may not assist by loan, grant, license or otherwise any water resource project which would have a direct and adverse effect on the values for which a river was designated.

Management Direction

Every river in the National System must be administered in such a way as to protect and enhance the values that made it eligible for the National System, but not to limit other uses that do not substantially interfere with public use and enjoyment of these values. This requires that every river in the National System, whether designated by Congress or the Secretary of the Interior, have a manager responsible for assuring protection. Federal managers include the USFS in the Department of Agriculture or the BLM, NPS or U.S. Fish and Wildlife Service (USFWS) in the Department of the Interior. Management is provided by the federal agency (or agencies) which manages the land adjacent to the river. For rivers designated under Section 2(a)(ii), a state agency is responsible for management, sometimes in concert with local governments.

River Classification

Rivers in the National System are classified as wild, scenic or recreational. This terminology has caused frequent confusion, because wild rivers are not necessarily fast-moving whitewater rivers, scenic rivers may not be noted for scenic values and recreational rivers may not receive heavy public use. The labels actually refer to the degree of development along the river. The definitions of wild, scenic and recreational from the law are:

“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.

“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.

“Recreational” river areas – Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past.

Rivers in the National System are often referred to as “wild and scenic rivers” without regard to actual classification. This is acceptable when speaking of the National System in general, but the specific legal classification is an important distinction as it has a direct effect on how the river is administered and whether certain activities on federally owned land within the boundaries are permissible. Regardless of classification, each designated river is administered with the goal of nondegradation and enhancement of the values which caused it to be designated.

Establishment of Boundaries and Land Acquisition

In the case of state-protected rivers, the state determines how it will protect resources. This may or may not include establishment of lateral boundaries. Boundaries are required, however, for federally managed rivers in the National System. Boundaries are limited to an average of no more than 320 acres per river mile. Because Congress did not intend the National System to result in addition of large acreages to the federal estate, purchase of fee title within this boundary is limited to no more than 100 acres per mile and, if over half the land within the boundary is in public ownership (federal, state and local), condemnation cannot be used for fee title acquisition. Condemnation by the federal government also is not allowed where a river runs through an incorporated area which is enforcing zoning ordinances that are protecting natural and cultural values along the river. Land acquisition to the fullest extent authorized is often not required.

Cooperation with Others

The Act allows a federal river manager to assist and cooperate with states or their political subdivisions, landowners, private organizations or individuals to plan, protect and manage river resources. This authority applies within or outside a federally administered area and applies not only to rivers in the National System, but to all rivers. The assistance can include limited financial assistance.

Wild and scenic rivers are not “river parks,” a term which suggests public ownership of land given over to recreational pursuits. While some recreational use, or a great deal of use in some cases, is expected, management to protect natural and cultural values is emphasized. Such protection does not require public purchase and ownership of land if values can be protected by other means. These can include local zoning; restrictions on development on floodplains, steep slopes and other incompatible lands; donations of development rights to land trusts; and other methods. Use of these methods requires a great deal of cooperation among state and local governments, organizations and individuals and usually a central coordinator. This is an approach being used with increasing success, particularly in the northeastern states where private lands predominate and where, like elsewhere in the country, there is resistance to federal control or additional federal land acquisition for conservation purposes.

EXAMPLES OF WILD AND SCENIC RIVERS

The three examples of wild and scenic rivers presented here were selected to show both the broad range of types of rivers in the National System and the range of management strategies.

Rogue River, Oregon

The lower 84.5 miles of the Rogue River in Oregon is one of the original eight rivers designated in 1968. The BLM administers the upper 47 miles from the mouth of the Applegate River to the Siskiyou National Forest boundary. The USFS has responsibility for the lower 37.5 miles located within the boundaries of the Siskiyou National Forest. A portion of the lower river flows through the Wild Rogue Wilderness and, through special legislative language creating the wilderness, is managed as a wild river. Management as a wild river allows for uses not typically permissible in designated wilderness.

The river contains a diversity of recreation and scenic values flowing as it does through impressive rock gorges and canyons. It is recognized for an outstanding fishery, many miles of near natural scenery and whitewater boating. Recreational motorized and nonmotorized boating is done both by private parties and commercial operators. These different types of uses and users present challenges to the managers.

At the date of the river’s designation, the majority of adjacent lands were in public ownership. The BLM and USFS have purchased a number of properties in fee and various easement rights on other properties. The management of this river involves not only the federal government, but also landowners, the public, commercial recreation operators and local/state governments.

Loxahatchee River, Florida

The Loxahatchee River in Florida is a much different type of river and is managed differently than the Rogue. The designated section of river flows slowly through a subtropical swamp under a bald cypress canopy. Like the Rogue, however, it is a popular recreational river for boating. The river was authorized for study by Congress in 1978. The NPS studied the river and determined that only a short 7.6-mile stretch was eligible, because the remainder had been modified for shoreline development.

The study also determined that the appropriate administrator would be the state of Florida, because 4.25 miles flow through Jonathan Dickinson State Park, 1/2 mile flows through a county park and the South Florida Water Management District planned to purchase the remaining privately owned shoreline for additional parkland. Local land use controls offer protection for land beyond the shoreline. The state of Florida did not (and still does not) have legislation for a state system of protected rivers, but it did pass legislation to make this segment of the Loxahatchee a state scenic river and to enable the Florida Department of Natural Resources to protect it. Following an application by the Governor of Florida, the Secretary of the Interior designated it as a state administered river in 1985.

Upper Delaware River, New York and Pennsylvania

The Delaware River is the largest undammed American river east of the Mississippi River. A 73.4-mile segment and a 37-mile segment, known as the Upper Delaware and Middle Delaware respectively, were designated by Congress in 1978. An additional 67.3-mile segment, referred to as the Lower Delaware, was designated in 2000.

The Upper Delaware is a component of both the National System and the National Park System. The NPS administers the river using a superintendent and a small staff. The Upper Delaware was among the first so-called “partnership” or “private land” rivers (as it flows primarily through privately owned land) designated. Although the NPS has land acquisition authority, it was directed by Congress to work with the states of New York and Pennsylvania, the adjacent counties and local governments to protect river and land-based resources. Land acquisition is not to be the primary tool for resource protection. A citizens advisory council was authorized to assist in this effort.

There was a great deal of controversy locally, with some people fearing that the NPS would resort to a major acquisition program. However, after a long, fractious process, a management plan was developed for the river, along with the formation of a management council, in which most of the local governments participate. The ultimate effectiveness of this approach is to be determined, but so far it is working to protect the river values.

INFORMATION ABOUT WILD AND SCENIC RIVERS

For additional information about the National System, please contact the following:

Bureau of Land Management
U.S. Department of the Interior
National Landscape Conservation System
1849 C Street, NW
Washington, DC 20240

National Park Service
U.S. Department of the Interior
Conservation & Outdoor Recreation Programs
1849 C Street, NW
Washington, DC 20240

U.S. Forest Service
U.S. Department of Agriculture
Wilderness & Wild and Scenic Rivers
201 - 14th Street
Washington, DC 20250

U.S. Fish and Wildlife Service
U.S. Department of the Interior
Division of Refuges
4401 North Fairfax Drive
Arlington, Virginia 22203

In addition to the National System, there are approximately 20 state river systems which provide varying degrees of resource protection for many of the nation's rivers. For more information on state systems, contact:

National Park Service
U.S. Department of the Interior
Conservation & Outdoor Recreation Programs
1849 C Street, NW
Washington, DC 20240

You may also learn more from our web site at www.rivers.gov.

