

Implementing the Wild & Scenic Rivers Act: Authorities and Roles of Key Federal Agencies



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Council Contact: Jackie Diedrich
U.S. Forest Service
Portland, Oregon

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Bureau of Reclamation — *Mollie Buckey*

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Rural Utilities Service — *Larry Wolfe*

U.S. Army Corps of Engineer — *Forester Einarsen*

U.S. Coast Guard — *Jeanne Timmons*

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Interagency Wild & Scenic Rivers Coordinating Council

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FOREWORD

The Wild and Scenic Rivers Act (WSRA) charges administration of rivers in the National Wild and Scenic Rivers System (National System) to four federal land management agencies (Bureau of Land Management, National Park Service, U.S. Fish and Wildlife Service, and U.S. Forest Service). However, to protect and enhance river values as directed in the WSRA, it is essential to use the authorities of a number of other federal agencies in administering the water column, river bed/bank, and upland river corridor. Understanding how federal agencies interface in the wild and scenic rivers (WSR) program is important to maintain effective partnerships and assure the long-term health of the National System. This paper is intended to help staff from river-administering and key federal agencies understand the various authorities and better coordinate agency roles in river protection.

INTRODUCTION

Congress declared a policy to protect selected rivers in the nation through the WSRA. The river-administering agencies are to protect the river's identified values, free-flowing condition, and associated water quality. Specifically, each component is to be "administered in such manner as to protect and enhance the values which caused it to be included in said system. . . ." The WSRA also directs other federal agencies to protect river values. It explicitly recognizes the Federal Energy Regulatory Commission, Environmental Protection Agency, and any other federal department or agency with lands on or adjacent to designated (or congressionally authorized study) rivers or that permit or assist in the construction of water resources projects.¹

Effective administration of designated rivers and congressionally authorized study rivers requires knowledge of the authorities of involved federal agencies. Their role in helping to implement the WSRA may be regulatory, as a direct funding entity, or indirectly by providing

¹ Refer to the "Wild and Scenic Rivers Act: Section 7" technical paper in the interagency *Wild and Scenic Rivers Reference Guide* for the role of other federal agencies in proposing or assisting in water resources projects. The river-administering agency, through its respective Secretary, is responsible for determinations under Section 7 of the WSRA.

federal assistance through funding the actions of others. An understanding of the roles of federal agencies will promote opportunities for partnership in WSR protection.

STATUTORY BACKGROUND

The mandate to protect river values through coordinated federal actions is found in several sections of the WSRA.

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 . . . 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.*

Section 7(a): *The Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, as amended, on or directly affecting any river which is designated in section 3 of this Act as a component of the National Wild and Scenic Rivers System . . . and 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. Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a wild, scenic, or recreational river area or on any stream tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on the date of designation. . . .²*

Section 10(a): *Each component . . . shall be administered in such a 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 the public use and enjoyment of these values. In such administration, primary emphasis shall be given to protecting its esthetic, scenic, historic, archaeologic, and scientific features.*

Section 12(a): *The Secretary of the Interior, the Secretary of Agriculture, and the head of any other federal department or agency having jurisdiction over any lands which*

² Section 7(b) provides the same protection to congressionally authorized, 5(a), 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 shorter term study process.

include, border upon, or are adjacent to, any river included within the National Wild and Scenic Rivers System or under consideration for inclusion, in accordance with section 2(a)(ii), 3(a), or 5(a), shall take such action respecting management policies, regulations, contracts, plans, affecting such lands . . . as may be necessary to protect such rivers in accordance with the purposes of this Act.

Section 12(c): *The head of any agency administering a component of the National Wild and Scenic Rivers System shall cooperate with the Administrator, Environmental Protection Agency and with the appropriate state water pollution control agencies for the purposes of eliminating or diminishing the pollution of waters of the river.*

AUTHORITIES AND ROLES OF KEY FEDERAL AGENCIES

The following descriptions were developed in collaboration with key federal agency advisors to the Interagency Wild and Scenic Rivers Coordinating Council. Agency web sites are provided to facilitate additional research into specific programs.

Bureau of Reclamation (www.usbr.gov)

Description: The Reclamation Act of 1902 granted the Secretary of the Interior the authority to make examinations and surveys for, and to locate and construct irrigation works for, the storage, diversion and development of waters. The 1902 Act also required the United States Department of the Interior (USDI) to honor state law governing the control, appropriation, use and distribution of water. Subsequent legislation expanded the authority to include a variety of non-irrigation project purposes such as hydropower, municipal and industrial water, wastewater reuse and water recycling, recreation, fish and wildlife protection, and endangered species recovery. The present mission of the Bureau of Reclamation (BOR) is to manage, develop and protect water and related resources in an environmentally and economically sound manner.

The BOR is organized into a headquarters office in Washington, D.C., a technical center in Denver, Colorado, five regional offices (Billings, Montana; Boise, Idaho; Boulder City, Nevada; Sacramento, California; and Salt Lake City, Utah), and 26 area offices throughout the 17 western states.

Authorities/Roles: Stored water, held in BOR facilities, is allocated and released according to state water rights for authorized purposes as specified by Congress for each project. The stored water is federally, privately, state, or jointly (federal and district) owned. The BOR contracts

with project sponsors to provide stored water for allocated uses, primarily through water service contracts or through spaceholder³ contracts (for future use).

If there is uncontracted water or uncontracted space, the BOR may release such water for fish and other purposes as long as these uses are within the specific purposes for the project and authorized by Congress. Any change in allocation requires congressional approval. Subject to the purposes authorized by specific project legislation, the BOR cooperates with other federal, state and local entities to provide flows to enhance WSRs. For example, the BOR Pacific Northwest Region has provided minimum winter and summer flows for the benefit of the fishery and associated recreation of the Crooked WSR.

Coordination Processes: To increase water flow in a WSR, river-administering staff should coordinate with the BOR area office controlling the specific dam and/or reservoir. The need for additional water should be expressed to the local entity (e.g., irrigation district or town). If there is potential for change in water allocation, the BOR, working with the local entity, would attempt to secure the state's agreement. The BOR may also be involved in projects subject to Section 7 of the WSRA (i.e., water resources projects below/above a WSR).

Environmental Protection Agency (www.epa.gov)

Description: The Environmental Protection Agency (EPA) was established in 1970 to protect and preserve public health and the vitality of natural ecosystems. Related to the goals of the WSRA, the EPA administers activities under the Clean Water Act (CWA) and Safe Drinking Water Act (SDWA).

The EPA has a Washington, D.C., headquarters and 10 regional offices. Many of EPA's programs are delegated to state agencies with oversight by regional EPA offices.

Authorities/Roles: River-administering agencies are directed to cooperate with the EPA and appropriate state water pollution control agencies "for the purpose of eliminating or diminishing the pollution of waters of the river" (Section 12(c) of the WSRA). The CWA, Floodplain and Wetlands Executive Orders, and the SDWA provide the EPA's authority to protect water quality.

³ A spaceholder -- storage -- contract is a type of repayment contract. Under spaceholder contracts with the BOR, spaceholders are entitled to a percentage of the total reservoir capacity, and their repayment obligation is based on this capacity. Water that accrues to this capacity is available for the spaceholder's use in accordance with the contract and state and federal law. Water accruing to this space which is not used during the year is carried over in the individual spaceholder's account and managed by individual spaceholders for use in future years.

Clean Water Act: The CWA focuses on improving water quality by maintaining and restoring the physical, chemical and biological integrity of the nation's waters. It provides a comprehensive framework of standards, technical tools, and financial assistance to address the many stressors that can cause pollution and adversely affect water quality, including municipal and industrial wastewater discharges, polluted runoff from urban and rural areas, and habitat destruction.

Implementation of CWA programs important in WSR administration is typically delegated to state agencies and also Indian tribal governments, with the EPA maintaining an oversight role. Key CWA programs include: water quality standards; effluent guidelines; national pollutant discharge elimination system (NPDES); nonpoint sources; total maximum daily loads (TMDLs); state water quality certification; and permits for discharge of dredged or fill material in waters of the United States.

Water Quality Standards: Water quality standards (Section 303 of the CWA) consist of three interrelated parts:

- 1) Uses — Uses are designated by states and authorized Indian tribal governments. Fishable/swimmable are the statutory default “uses.” Uses may be made more specific and more or less stringent. However, if proposed as less stringent, the burden is to show that default uses do not exist or are not reasonably attainable.
- 2) Water Quality Criteria — The criteria measure attainment of uses and can be chemical, biological or other. The EPA and states are identifying and adopting direct indicators of environmental health.
- 3) Antidegradation Policy — EPA regulations require states to adopt, as part of their water quality standards, a statewide antidegradation policy to maintain existing uses and protect high-quality waters. States can designate Outstanding Natural Resource Waters, which afford very stringent protection by prohibiting nearly all new discharges, and for that reason are infrequently adopted.

Effluent Guidelines: The EPA is responsible for developing “Effluent Guidelines” under Section 304 of the CWA. This lengthy and expensive process requires the EPA to identify, for each industrial/pollution source sector, the best practicable (reasonably attainable) control technology. This technological baseline may take five-seven years to develop.

National Pollutant Discharge Elimination System: The CWA (Section 402) requires that all discharges from any **point** source into waters of the United States must obtain an NPDES permit. By point sources, the EPA means discrete conveyances such as pipes

or man-made ditches. This program has been delegated to some 40 states. These permits incorporate limitations specified through effluent guidelines. Private sector facilities, municipal sewage treatment works, sizeable municipal and industrial stormwater and sewage system outfalls, and major animal feedlots, et cetera, require permits for discharge. Irrigation return flows are specifically exempted from regulation as point sources.

Best Management Practices: Section 319 of the CWA requires that states develop and implement programs to apply “best management practices” (BMPs) to **nonpoint** sources, but does not include the authority to ensure implementation of BMPs sufficient to remedy impairments. State programs have generally relied on federal funding (from Section 319 grants and other sources, primarily the Farm Bill) to encourage use of BMPs. The state 305(b) reports indicate a majority of water quality impairments are caused by nonpoint sources of pollution, including urban stormwater and agricultural and silvicultural practices.

Total Maximum Daily Loads: The TMDL process is, in essence, the following: States identify specific waters where quality is impaired and does not attain designated uses; states set priorities to remedy such impairments; states allocate pollutant loadings among point and nonpoint sources; and the EPA approves state actions or acts in lieu of the state if necessary. Point and nonpoint sources are then reduced to achieve the pollutant loadings established by the TMDL through a wide variety of federal, state, Indian tribal governments, and local authorities, programs and initiatives. States have primary responsibility for developing lists and the TMDLs under Section 303(d) of the CWA.

For waters impaired solely or primarily by nonpoint sources, each state must develop and describe its plan for implementing load allocations for nonpoint sources, and must provide reasonable assurances that the nonpoint source load allocations established in the TMDLs will be achieved. These assurances may be regulatory, non-regulatory, or incentive-based. TMDL implementation may involve individual landowners and public and private enterprises engaged in agriculture, forestry, or urban development. The primary implementation mechanism is the state section 319 nonpoint source management program (BMPs) coupled with local, state and federal land management programs and authorities.

Local regulations or ordinances related to zoning, land use, and stormwater runoff are often used to abate polluted runoff. Federal land management agencies have responsibilities to resolve nonpoint source problems on federally owned and managed lands. A federal agency may establish a memorandum of understanding with the state water quality agency to accomplish implementation of nonpoint source controls necessary to meet water quality standards, and implement practices through federal licenses and

permits. Voluntary, incentive-based approaches at the state and local level can also be used to implement management practices for controlling nonpoint source pollution.

Water Quality Certification: States have the authority to certify whether or not a proposed activity resulting in a discharge and requiring a federal license or permit would comply with the certifying state's water quality standards for the affected waters. States can impose conditions on the activity to ensure compliance with state standards, or can veto the federal license or permit if appropriate conditions cannot ensure compliance. Per the United States Supreme Court's 1994 decision in the Public Utility District of Jefferson County (State of Washington) case, these standards can include state water quantity (instream flow) as well as quality requirements.

Dredged or Fill Material: The United States Army Corps of Engineers is the permitting authority for the federal government under Section 404 of the CWA. The basic premise of the program is that no discharge of dredged or fill material can be permitted if a practicable alternative exists that is less damaging to the aquatic environment, or if the nation's waters would be significantly degraded. Regulated activities are controlled by a permit review process. (Refer to the more detailed discussion of the United States Army Corps of Engineers authorities.) The EPA has veto authority over these permits via Section 404(c), and also for the two states with delegated authority (Michigan and New Jersey).

Floodplain and Wetlands Executive Orders: The Floodplain and Wetlands Executive Orders strengthen the EPA's authorities under Section 404 to avoid adverse impacts and developments within floodplains and the destruction or modification of wetlands due to construction. Any water project permitted under the CWA must be determined under Section 404(b) to be the "least environmentally damaging practicable alternative," which means that an applicant for a permit must analyze less environmentally damaging alternatives which can achieve the objectives of the proposed project.

President's Clean Water Action Plan: The President's Clean Water Action Plan (Action Plan), established February 1998, provides new opportunities for partnerships to monitor, identify and remedy pollution problems. This program was developed from a directive from the Vice-President on the 25th anniversary of the CWA. It recognized the substantial progress in cleaning the nation's waters and the need for a new focus on largely federal coordination to address waters impaired by a nonpoint source.

Federal coordination is based on a state's priority setting through the TMDL program. Federal land management agencies are to ask states to convene joint state agency-public processes including federal land management and regulatory agencies in the assessment of watershed health. They are further directed to provide technical assistance or funding support for these

state efforts. The Action Plan enables states, which develop and prioritize their TMDL implementation plans, to target substantial additional federal funding and receive focused attention from federal agencies.

Safe Drinking Water Act: The SDWA was established to protect the quality of drinking water in the United States. This law focuses on all waters actually or potentially designed for drinking use, whether from above ground or underground sources. Under the SDWA, states must perform water assessments to evaluate the susceptibility of water systems' source water to contamination (using federal funds). These assessments are provided to water system users and the public, informing them of any threats to the quality of their source water and enabling them to seek help from state and local stakeholders. States can also use a percentage of annual federal funds for any kind of source water protection program, to make loans for voluntary projects, or to acquire land or easements from willing sellers.

Coordination Processes: EPA (and state water quality agency) staff can provide considerable technical expertise and information related to the water quality of WSRs. They can directly affect WSRs through their authorities for grants, subsidized loans, and permits. Specific water quality and extensive other related information is available on a watershed basis on "Surf Your Watershed" at the EPA's web site. WSR staff can also provide river-specific water quality data and assist in the development of water quality standards and monitoring strategies. There is considerable opportunity for participation in a state's development of the TMDLs and to help set priorities for use of the State Revolving Funds for water quality improvement projects. It is important for river-administering agency and EPA staff to coordinate on any activities that might affect the free-flowing condition of a WSR or a congressionally authorized study river (i.e., subject to review under Section 7 of the WSRA).

Farm Service Agency (www.fsa.usda.gov)

Description: The Farm Service Agency (FSA) administers the farm credit programs of the former Farmers Home Administration through national, state and county offices. The FSA makes and guarantees loans and provides credit counseling and supervision to eligible applicants who operate family-sized farms and are temporarily unable to obtain private, commercial credit. These may include farmers who cannot qualify for conventional loans because of insufficient net worth, or those who have suffered financial setbacks from natural disasters. Major FSA loan programs include, but are not limited to, Farm Ownership, and Farm Operating and Emergency Loan Assistance. The FSA maintains an inventory of farm properties that were held as security for defaulted loans; these properties are resold to eligible buyers or may be transferred to other federal or state agencies.

Authorities/Roles: The authorities for the FSA to maintain an inventory of defaulted properties are found in the Consolidated Farm and Rural Development Act. The FSA is responsible for conducting an environmental analysis of its inventory properties under the National Environmental Policy Act (NEPA). The agency's regulation is located at 7 CFR Part 1940, Subpart G, Environmental Program. Exhibit E of this regulation contains implementing procedures for the WSRA.

The FSA has a responsibility to ensure protection for all resources including wetlands, floodplains, threatened or endangered species, WSRs, and historical sites located on property in its inventory. This is accomplished through easements if the property is sold or through restrictive language in the conveyance deed if transferred to a federal or state agency.

Coordination Processes: The FSA official responsible for processing the request for financial assistance reviews each project for proximity to a WSR, a congressionally authorized study river, or a river identified in the Nationwide Rivers Inventory (NRI). (The NRI is maintained by the National Park Service (NPS)). If such a river is in the project area, or the project has the potential to affect such a river, the FSA official initiates consultation with the river-administering agency (or the NPS for NRI rivers). The initial point of contact for guidance and information on issues related to WSRs is the FSA State Environmental Coordinator located in each state office. To determine if agricultural properties are on the FSA inventory list, contact the State Executive Director of the FSA.

Federal Emergency Management Agency (www.fema.gov)

Description: The Federal Emergency Management Agency (FEMA) is an independent federal agency reporting to the President. Founded in 1979, the FEMA's mission is to:

Reduce the loss of life and property and protect our institutions from all hazards by leading and supporting the nation in a comprehensive, risk-based emergency management program of mitigation, preparedness, response and recovery.

The FEMA's responsibilities include coordinating the federal response to floods and other disaster assistance to states, communities and individuals; administering the National Flood Insurance Program (NFIP); and administering programs providing assistance for the acquisition, relocation, or floodproofing of floodprone buildings and other mitigation actions. The FEMA also provides technical assistance and promotes governmental and non-governmental floodplain management activities.

In addition to a headquarters in Washington, D.C., the FEMA has 10 regional offices.

Authorities/Roles:

National Flood Insurance Program: The FEMA administers the NFIP established by the National Flood Insurance Act of 1968. The Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994 made significant changes to the program. The purposes of the NFIP are to: (1) better indemnify individuals for flood losses through insurance; (2) reduce future flood damages through state and community floodplain management regulation; and (3) reduce federal expenditures for disaster assistance and flood control. Participation in the NFIP is voluntary. However, federal agencies are prohibited from providing financial assistance for acquisition or construction of buildings in the floodplains of communities that do not participate. The FEMA can only provide flood insurance in communities which adopt and enforce floodplain management regulations that meet or exceed minimum criteria. Generally, communities adopt floodplain management regulations as a freestanding ordinance or incorporate the provisions into their zoning ordinances or building codes.

An important accomplishment of the NFIP has been mapping the nation's floodplains. These maps provide the basis for state and community floodplain management regulations, for calculating flood insurance premiums, and for determining whether or not flood insurance is required for buildings as a condition of obtaining mortgage loans or other federal or federally related financial assistance. FEMA flood hazard maps are also used by states and communities for emergency management and for land use and water resources planning, and by federal agencies when they apply Executive Order 11988, Floodplain Management. Floodplain maps are continuously revised to reflect changed conditions.

Most flood hazard maps designate a floodway that includes the channel and adjacent floodplain areas that must be protected in order to maintain the capacity of the floodplain to convey flood waters. Communities must prohibit development in these floodways unless it can be shown that development would cause no increase in flood elevations. Community floodplain management regulations also require that residential buildings be elevated to, or above, the elevation of the base flood (the flood that has a one percent chance of occurring during any given year, also known as the 100-year flood). Non-residential buildings can either be elevated or floodproofed to this elevation.

The NFIP also has established a Community Rating System (CRS) which provides discounts on flood insurance premiums in those communities that establish floodplain management programs that go beyond the NFIP minimum requirements. Under the CRS, communities receive credit for more restrictive regulations; acquisition; relocation or floodproofing of floodprone buildings; preservation of open space; and other measures that reduce flood damages or protect the natural resources and functions of floodplains.

Acquisition/Mitigation Programs: The FEMA also administers two programs that can fund the acquisition, relocation, elevation, or floodproofing of floodprone buildings or other mitigation

actions. The largest of these is the Hazard Mitigation Grant Program established under Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988. This program is generally administered by state emergency agencies that establish funding priorities and select projects. Typically, project applicants are communities. The FEMA also administers the Flood Mitigation Assistance Program established by the National Flood Insurance Reform Act of 1994. This program provides funding to states and communities for flood hazard mitigation planning and for mitigation projects that protect insured buildings. Under both programs, any acquired property is deeded to the community and must be maintained as open space.

Under Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the FEMA provides assistance to states, communities, and certain non-profit organizations for the repair of damaged buildings and other public facilities. Additional funding is provided to mitigate future damages to those facilities. Funding can also be used to build replacement facilities outside the floodplain in lieu of repairing the damaged facility.

The FEMA also has a new initiative, “Project Impact: Building a Disaster Resistant Community,” that challenges communities to undertake actions to reduce the effects of natural disasters through a public and private sector partnership. The goal of this initiative is to reduce the personal and economic costs of disasters by bringing together community leaders, businesses, and citizens to implement risk reduction activities as part of daily decision making in the community. The FEMA provides some seed money, but the intent is to leverage other public and private funding.

Coordination Processes: Generally, FEMA programs are administered through states and communities. The NFIP floodplain management regulations are adopted and enforced by participating communities as part of their land use ordinances and building codes. The FEMA has no direct involvement in the administration of these ordinances and codes. The FEMA’s role is to provide technical assistance and to monitor enforcement by communities. Communities that do not enforce their floodplain management regulations can be placed on probation or suspended from the program if enforcement problems cannot be resolved through technical assistance and consultation. Communities are encouraged to adopt more restrictive requirements, and many do so.

States also have a role in the NFIP, and many have established state floodplain management programs. Each state has designated a NFIP state coordinating agency, generally the state environmental or natural resources agency or the state emergency management agency. Most states provide technical assistance to communities using FEMA funding, their own funding, or a combination of the two. Many states have adopted floodplain management statutes and regulations and have established and funded their own floodplain management programs. If the state requirements are more restrictive than those of the FEMA, the state requirements take precedence. A few states directly regulate some categories of floodplain development.

For declared disasters, the FEMA activates the Federal Response Plan, which has 27 signatory agencies. The Federal Response Plan provides a framework for the coordination of assistance to states and communities and individuals by federal agencies. Disasters are declared by the President at the request of the governor of the impacted state if the impacts of the disaster exceed the ability of the state and the affected communities to respond. For each declared disaster, a federal coordinating officer is appointed to oversee federal assistance. The governor appoints a state coordinating officer as his or her counterpart. FEMA assistance for the repair of damaged public buildings and other facilities is provided in partnership with the state through the state emergency management agency.

The Hazard Mitigation Grant Program is administered by state emergency management agencies. The point of contact for the program is the State Hazard Mitigation Officer. Applicants for projects include state and local governments, certain non-profit organizations or institutions, Indian tribes or authorized tribal organizations, and Alaska Native villages or organizations. States develop an administrative plan that governs how projects are selected for funding. Projects must be cost effective and meet other criteria established by the FEMA. The FEMA must also comply with the NEPA and other requirements that apply to federal actions. The Flood Mitigation Assistance Program is also administered by states through an agency designated by the governor. This agency is usually the state emergency management or natural resource agency.

The FEMA also promotes and coordinates governmental and non-governmental floodplain management activities and is a consulting agency to other federal agencies on issues relating to implementation of Executive Order 11988, Floodplain Management. The FEMA chairs the Federal Interagency Floodplain Management Task Force that develops and updates the Unified National Program for Floodplain Management.

Federal Energy Regulatory Commission (www.ferc.fed.us)

Description: The Federal Energy Regulatory Commission (FERC) is an independent federal commission in the Department of Energy with the exclusive authority to license non-federal water power projects on navigable waterways and federal lands. The Commission is composed of five members, including a chairman, all appointed by the President. The FERC's Offices of Hydropower Licensing (OHL) and Pipeline Regulation (OPR) handle hydropower and pipeline matters, respectively.

The OHL and OPR are headquartered in Washington, D.C. The OHL also has five regional offices located in Atlanta, Georgia; Chicago, Illinois; New York, New York; Portland, Oregon; and San Francisco, California. The regional offices are responsible predominantly for dam safety and inspection matters.

Authorities/Roles: The FERC is involved in hydropower licensing. Section 7(a) of the WSRA prohibits the FERC from licensing the construction of hydroelectric facilities “on or directly affecting” rivers included in the National System. Section 7(b) provides the same prohibition for congressionally authorized study rivers. Sections 7(a) and (b) also provide a standard of evaluation for water resource projects (including hydroelectric projects) located outside of the designated or congressionally authorized study river corridor. The Federal Power Act (FPA) provides the FERC with exclusive authority in the issuance of an original license and relicensing of non-federal water power projects.

The FERC has, in addition to hydropower licensing, the authority to certify oil and gas pipelines via the Natural Gas Act. The WSRA provides specific direction in Section 13(g) that the river-administering agency “may grant easements and rights-of-ways upon, over, under, across, or through any component of the National System in accordance with the laws applicable to the national park system and the national forest system, respectively: *Provided*, That any conditions precedent to granting such easements and rights-of-ways shall be related to the policy and purposes of this Act.” Thus, the river-administering agencies are charged with granting rights-of-ways and easements for pipelines on designated rivers, conditioning their grants as appropriate.

The FERC’s regulations require, for processing of oil and gas pipelines, that “applications under Section 7 of the Natural Gas Act shall set forth all information necessary to advise the Commission fully concerning the operation . . . [and] construction . . . for which a certificate is requested. . . .” A certificate refers to the Commission order authorizing the transportation of natural gas, subject to provisions of the Natural Gas Act, and the related construction and operation of facilities. Issuance of a certificate is generally subject to environmental analysis under the NEPA. FERC regulations further provide that “where a proposed facility will or may be located in or routed through . . . any park, scenic, wildlife, or recreational areas, officially designated by duly constituted public authorities, and where such facility may have a significant effect on the scenic, historic, wildlife or recreational values of such areas, applicant shall state the reasons for such location and shall list federal, state and local agencies having jurisdiction which have been or will be consulted prior to construction.” Similarly, activities authorized under a blanket certificate must be “consistent with all applicable law including the provisions of the Wild and Scenic Rivers Act.”⁴

Coordination Processes: The Commission has a three-stage consultation process for hydro-power licensing that requires applicants for a license or applicants seeking an exemption to

⁴ (A blanket certificate allows a company to make a one-time request for construction and operation of certain facilities without going through the complete application process. These activities are generally categorically excluded from the need for environmental analysis under the NEPA.)

identify any potential conflicts between the project and any WSR prior to filing. If a conflict is identified, the proponent seldom files an application.

Once an application is filed, the FERC routes applications for preliminary permits, licenses and exemptions from licensing for proposed hydroelectric facilities to the river-administering agencies for determination of whether the project is “on or directly affecting” a designated WSR or congressionally authorized study river. If the river-administering agency determines that any project would be “on or directly affecting” a designated WSR or congressionally authorized study river, the permit, license or exemption application may be dismissed without further processing. FERC recreation and land use staff also maintain copies of the current list of designated WSRs or congressionally authorized study rivers as a basis to identify whether a project has the potential to conflict with the WSRA.

The FERC is subject to the river-administering agency’s finding relating to developments (i.e., FERC-licensed projects) located below/above, or on a tributary to, a designated WSR or congressionally authorized study river. The downstream/upstream project may be constructed (proposed new project) or reconfigured and/or operations modified (modification or relicense) as long as the proposed or existing project will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present at the date of designation.⁵ Opportunities identified in the river management plan (or other plans) may be used to recommend enhancements. However, such recommendations are not part of the Section 7 determination, nor binding on the FERC. In general, the FERC relies on Section 7 consultation with the river-administering agency and, absent extraordinary circumstances, has adopted their determination and/or recommendations.

For rivers determined eligible or suitable for potential inclusion in the National System through agency planning processes, (Section 5(d)(1)), the FERC staff relies on the NRI and agency response to preliminary permits, and license or exemption applications. Listing on the NRI or identification as an eligible/suitable river through agency study processes does not prohibit the FERC from licensing a project. Only congressionally authorized study rivers (Section 5(a)) are subject to Section 7(b) of the WSRA. It is important to identify potential conflicts early for consideration in the FERC’s NEPA process.

The WSRA is also taken into consideration in certifying/licensing oil and gas pipeline projects. If such a project involves a designated WSR, the applicant must provide the information required in the FERC’s regulations, including information pertaining to an easement or right-of-way under Section 13(g) of the WSRA. While this section authorizes the granting agency to establish

⁵ (Section 7(b) provides the same protection to congressionally authorized 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 shorter-term study process.)

the conditions pertinent to the authorization, agencies typically consult with each other before establishing such conditions. This occurs primarily as a result of consultation requirements of the NEPA rather than the WSRA. The degree of consultation depends on the significance of the expected impacts of the project.

Federal Highway Administration (*www.fhwa.dot.gov*)

Description: The Federal Highway Administration (FHWA) works with land managing agencies to design and build highways including bridges on federal lands. The FHWA also manages activities conducted under the Federal-aid Highway Program, the purpose of which is to improve highway and transit infrastructure; it is a grant-in-aid and cooperative program implemented by state transportation agencies. All actions under the program for surface transportation improvements are planned, designed and carried out by state agencies or by local authorities on behalf of the states. The FHWA provides oversight and approval at key stages of development to assure actions to receive Federal-aid Highway Funds are consistent with applicable law, regulation and policy.

The FHWA has, in addition to a headquarters office in Washington, D.C., four technical resource centers (Atlanta, Georgia; Baltimore, Maryland; Chicago, Illinois; and San Francisco, California), and a division office in each state. The technical resource centers advise and assist the division (state) offices. The division offices handle day-to-day project coordination, decision making and environmental documentation.

Authorities/Roles: As part of the FHWA's role in managing activities under the Federal-aid Highway Program, the agency is also responsible for implementing Section 4(f) of the Department of Transportation Act of 1966. Section 4(f) established a national policy for agencies within the United States Department of Transportation (USDOT) to preserve the natural beauty of public park land, recreation land, wildlife refuges, and significant historic sites. Agencies in the USDOT may not approve any actions under their programs which require the use of public lands from these areas unless there is no feasible and prudent alternative to the use and all possible actions are undertaken to minimize harm resulting from the use.

Publicly owned public parks, recreation areas, refuges, and historic sites in a WSR corridor are subject to Section 4(f). Privately owned lands in a WSR corridor are not subject to 4(f) except for historic/archaeologic sites on, or eligible for, the National Register of Historic Places. Private lands that are under easement establishing long-term and continual public access and use for recreational purposes are generally subject to Section 4(f) provisions. Publicly owned lands not open to the general public (e.g., military bases and any other areas with similar restricted access) are not subject to Section 4(f).

Lands in WSR corridors managed for multiple uses may or may not be subject to Section 4(f) depending on the manner in which they are administered by the managing agency. Close examination of the management plan is required prior to any use of these lands for transportation purposes. Section 4(f) would apply to those portions of the land designated in a management plan for recreation or other Section 4(f) uses. Where the management plan does not identify specific uses or where there is no plan, the transportation agency must consult further with the river-administering agency to make a Section 4(f) determination.

Aspects of the FHWA's program determined to be a water resources project are subject to Section 7 of the WSRA. This requires the river-administering agency to make a determination as to whether there are "direct and adverse effects" to the values of a WSR or congressionally authorized study river. Although Section 7 of the WSRA generally results in more stringent control, Section 4(f) may also apply to bridges which cross a designated WSR.

Coordination Processes: Any proposed action having a foreseeable effect on a WSR or a congressionally authorized study river is identified by the FHWA early in the planning process. Such identification requires the FHWA to coordinate with the river-administering agency and other interested parties. These activities are conducted by state transportation agencies under the auspices of the FHWA's role in fulfilling its responsibilities under the NEPA. For each alternative under consideration, the environmental analysis will identify the potential effects on the natural, cultural and recreational values of the designated or study river. If any 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 absent elimination of adverse effects. The state department of transportation's NEPA analysis (for the FHWA) does not substitute for a Section 7 determination by the river-administering agency.

To minimize potential conflict with Federal-aid Highway proposals, it is important for river-administering agency, FHWA, and state department of transportation staff to coordinate. Establishing this contact is important for WSRs with existing transportation systems (or those with potential for expansion) within the corridor. Coordination should occur early in the planning process to avoid or greatly minimize possible adverse consequences.

Natural Resources Conservation Service (www.nrcs.usda.gov)

Description: The Natural Resources Conservation Service (NRCS), formerly the Soil Conservation Service, provides technical and financial assistance through local conservation districts to land users, communities, watershed groups, federal and state agencies, Indian tribes, and others at their request. The NRCS works with state and local conservation staff to care for natural resources on private lands. The NRCS also develops comprehensive technical guidance

for conservation planning and assistance and provides financial assistance focused on non-federal lands.

The NRCS has a headquarters in Washington, D.C., six regional (administrative) offices, and state and field offices. The state offices work with state conservation agencies and field offices. At the field level, NRCS conservationists provide onsite assistance to solve specific natural resource problems.

Authorities/Roles: The NRCS works with some 3,000 local conservation districts to provide cost-sharing and technical assistance on private lands. This partnership is supported by personnel and funds provided by the Conservation Technical Assistance (CTA) program, the base program for the NRCS. The CTA program is focused on locally led conservation as the starting place for all NRCS programs. Locally led conservation begins with an assessment of conservation needs and includes identification of the assistance available to the community through government and non-governmental sources. For example, the NRCS may facilitate watershed inventories/assessments and provide planning and technical assistance to resolve resource issues.

Many of the NRCS's cost-share and technical assistance programs are implemented through the CTA, including water quality demonstration projects, National Resources Inventory, technology and data base development, conservation of wetlands (Swampbuster), and erosion control on highly erodible lands. Technical assistance and policy administration are also provided under the CTA. There are also United States Department of Agriculture (USDA) financial incentive programs that NRCS assists with, primarily by providing technical assistance. These programs include the Conservation Reserve Program (CRP), Environmental Quality Incentive Program (EQIP), Wildlife Habitat Incentives Program (WHIP), and Forestry Incentives Program (FIP). The CRP encourages farmers to convert highly erodible cropland or other sensitive acreage to natural vegetative cover with cost-share provided for establishment. The EQIP provides assistance to farmers and ranchers for development of a conservation plan which includes structural, vegetative and land management practices on eligible land. Cost-share payments are made for implementation with 50 percent of the funding targeted at natural resource concerns relating to livestock production. The WHIP provides financial incentives to develop fish and wildlife habitat on private lands. The FIP supports good forestry management practices on private lands.

The NRCS administers the Wetlands Reserve Program (WRP) that is a voluntary program to restore and protect wetlands on private property. Landowners receive financial incentives to enhance wetlands in exchange for retiring marginal agricultural land. Landowners who choose to participate in the WRP may sell a conservation easement or enter into a cost-share restoration agreement with the USDA to restore and protect wetlands. The landowner voluntarily limits

future use of the land, yet retains private ownership. The landowner and the NRCS develop a plan for restoration and maintenance of the wetland.

In addition to a role in conservation planning, the NRCS has authorities in watershed and flood protection. This authority is provided under the Watershed Protection and Flood Prevention Act (P.L. 83-566), and the Emergency Watershed Protection Program (Section 216 of P.L. 81-516).

The Watershed Protection and Flood Prevention Act authorizes technical and financial assistance to local sponsoring organizations for planning and implementing watershed projects. Many water-related issues may be addressed through this program including: (1) preventing damage from erosion, floodwater and sediment; (2) furthering the conservation, development and utilization and disposal of water; or (3) conserving and properly using land. This Act is limited to watershed areas of less than 250,000 acres and is often referred to as the “small watershed program.” Project sponsors are units of state and local government and organizations created by state law. Typically these include soil and water conservation districts; counties; municipalities; state agencies; or watershed, flood control, conservancy, drainage, irrigation, or other special purpose districts. The program emphasizes planning through interdisciplinary teams including the sponsors, other agencies, and environmental groups. In recent years, projects have focused on land treatment measures to solve natural resource problems such as substandard water quality and loss of wildlife habitat.

The Emergency Watershed Protection Program’s (EWP) purpose is to assist in relieving imminent hazards to life and property from floods and the products of erosion created by natural disasters. Authorized EWP technical and financial assistance are available in an emergency. Examples include: removing debris from stream channels and bridge abutments, reshaping and protecting eroding streambanks, repairing levees and structures, and reseeding damaged land areas. Sponsors of individual projects may be local officials of city, county and state government; Indian tribes; or watershed authorities. They provide the legal authority to obtain land and water rights and necessary permits. The sponsors further agree to provide local cost-sharing for construction and for the operation and maintenance of completed emergency measures.

Coordination Processes: River-administering and NRCS staff should work through local watershed authorities (soil and conservation districts) to identify opportunities to protect and enhance WSRs. Watershed/basin planning efforts facilitated by NRCS staff provide an opportunity to address activities inside and outside a WSR corridor. NRCS and conservation district staff may also provide for effective networking with local landowners. It is important for river-administering and NRCS staff to coordinate on any NRCS activities that might affect the free-flowing condition of a WSR or a congressionally authorized study river (i.e., projects subject to review under Section 7 of the WSRA).

Rural Development (www.rurdev.usda.gov)

The USDA Rural Development was created in 1994 when rural economic and community development programs, previously splintered among various USDA agencies, were merged into a new mission area. With this action, the Farmers Home Administration, Rural Development Administration, Rural Electrification Administration, and Agricultural Cooperative Service passed into history, with their services carried on by USDA Rural Development. Rural Development programs are administered through three services: Rural Business-Cooperative Service (RBS), Rural Housing Service (RHS), and Rural Utilities Service (RUS). Programs and services are provided through Rural Development's network of state and local offices. The initial point of contact for guidance and information on issues relating to the WSRA is the State Environmental Coordinator, located in each state office. The description for the three Rural Development services follow.

Rural Business-Cooperative Services (www.rurdev.usda.gov/rbs/)

The RBS is a federal financing agency within the USDA. The RBS was the result of combining the business programs of the former Farmers Home Administration and Rural Development Administration, the economic development programs of the former Rural Electrification Administration, and the Agricultural Cooperative Service. The RBS provides financial assistance in the form of direct loans, loan guarantees, and grants for several different programs. Major RBS programs include: Business and Industry Guaranteed and Direct Loans to create jobs and improve the economic and environmental climate in rural areas; Intermediary Relending Program Loans to finance business facilities and community development projects through eligible intermediaries in rural areas; Rural Business Enterprise Grants to help public bodies, non-profit corporations, and Indian tribal groups finance and facilitate development of small and emerging private business enterprises in rural areas; and Rural Economic Development Loans and Grants to create new jobs, retain existing jobs, and finance economic development through RUS electric or telecommunications borrowers in rural areas.

Authorities/Roles: The authorities for RBS activities are found in the Consolidated Farm and Rural Development Act, the Food Security Act of 1985, the Rural Electrification Act of 1936, and the Cooperative Marketing Act of 1926. The RBS is responsible for conducting an environmental analysis of its projects under the NEPA. The agency's environmental regulation is located at 7 CFR Part 1940, Subpart G, Environmental Program. Exhibit E of the regulation contains implementing procedures for the WSRA.

Coordination Processes: The RBS official responsible for processing the request for financial assistance reviews each project for proximity to a WSR, a congressionally authorized study river, or a river identified in the NRI. If such a river is in the project area, or the project has the potential to affect such a river, the Rural Development official initiates consultation with the river-administering agency (or the NPS for NRI rivers). The initial point of contact for guidance

and information on issues related to WSRs is the State Environmental Coordinator located in each state office.

Rural Housing Service (www.rurdev.usda.gov/rhs/)

Description: The RHS is a federal financing agency within the USDA. The RHS consists of the rural housing programs and community facility programs of the former Farmers Home Administration. The RHS provides financial assistance in the form of direct loans, loan guarantees, and grants for several different programs. Major RHS programs include: Home Ownership Loans to help low-income households purchase, construct, repair, or relocate homes; Home Improvement and Repair Loans and Grants which enable low-income rural homeowners to remove health and safety hazards from their homes and to make homes accessible for people with disabilities; Rural Rental Housing to finance construction of rental housing for low- and moderate-income individuals and cooperative housing for elderly or disabled persons; and Community Facilities Direct Loans, Loan Guarantees, and Grants to help construct, enlarge, extend, or otherwise improve community facilities providing essential services in rural areas and towns. Such essential facilities include, but are not limited to, municipal buildings, hospitals, fire and rescue, roads, and gas pipelines.

Authorities/Roles: The authorities for RHS activities are found in the Housing Act of 1949 and the Consolidated Farm and Rural Development Act. The RHS is responsible for conducting an environmental analysis of its projects under the NEPA. The agency's regulation is located at 7 CFR Part 1940, Subpart G, Environmental Program. Exhibit E of the regulation contains implementing procedures for the WSRA.

Coordination Process: The RHS official responsible for processing the request for financial assistance reviews each project for proximity to a WSR, a congressionally authorized study river, or a river identified in the NRI. If such a river is in the project area or the project has the potential to affect such a river, the Rural Development official initiates consultation with the river-administering agency (or the NPS for NRI rivers). The initial point of contact for guidance and information on issues related to WSRs is the State Environmental Coordinator located in each state office.

Rural Utilities Service (www.rurdev.usda.gov/rus/)

Description: The RUS is a federal financing agency within the USDA. The agency consists of the electric and telecommunications programs from the Rural Electrification Administration and the water and waste program from the Farmers Home Administration. The RUS provides financial assistance in the form of direct loans, loan guarantees, and grants to rural cooperatives, corporations, and public entities for the installation of rural electric, telecommunications, water and waste systems, and solid waste facilities. The RUS does not construct, operate, or manage

such facilities, nor does it obtain right-of-way easements or property acquisitions. Electric and telecommunications applications are processed at the national level, whereas water and waste projects are administered by Rural Development state and local staff.

Authorities/Roles: Authority for the electric and telecommunications programs is the Rural Electrification Act of 1936. Authority for the water and waste program is the Consolidated Farm and Rural Development Act, Section 306. The RUS is responsible for conducting an environmental analysis of its federal actions under the NEPA. RUS Environmental Policies and Procedures for implementing the NEPA are contained in 7 CFR Part 1794. The RUS has revised 7 CFR Part 1794 to include the water and waste program.

Environmental documents for electric and telecommunications program proposals are prepared by the applicant and/or consultant under the agency's guidance and direction. These documents are submitted to the national office for review by staff environmental protection specialists. The environmental analyses for water and waste program proposals are prepared in conjunction with engineering planning and design by the project proponents under the RUS's guidance and oversight. Under this procedure, the Rural Development specialists and State Environmental Coordinator manage the environmental review process and, ultimately, approve the environmental review document. The level of analysis each proposal receives is based on the thresholds established in 7 CFR Part 1794. Detailed instructions in the preparation of environmental documentation are contained in environmental guidance bulletins. RUS Bulletins 1794A-600 and 1794A-601 apply to electric and telecommunications program proposals and RUS Bulletin 1794A-602 applies to water and waste program proposals.

Coordination Process: The RUS has no separate procedure for compliance with the WSR. The agency relies on identification of specific WSR issues for most actions through instructions contained in the guidance bulletins. For proposals that normally require an environmental impact statement, the agency relies on identification of specific WSR issues in the scoping process.

U.S. Army Corps of Engineers (www.usace.army.mil)

Description: The United States Army Corps of Engineers (ACOE) is involved in three broad program areas related to WSRs: civil works (navigation, hydropower, flood control, irrigation and water supply, fish and wildlife conservation enhancement, regulation of construction and dredged and fill material discharges into aquatic areas, and outdoor recreation); reimbursable support of other federal agencies (such as the EPA's "Superfund" program); and responding to emergency relief activities directed by other federal agencies.

The ACOE's headquarters is in Washington, D.C., with eight division offices and 37 districts offices located throughout the nation.

Authorities/Roles: The ACOE has a variety of authorities and programs that could influence flows below or above a WSR. The ACOE Civil Works program is primarily a construction function that has resulted in numerous projects that provide a wide range of water storage and flow manipulation activities. Water storage may be to meet anticipated requirements for legislatively authorized flood reduction projects or to assure sufficient channel depths for authorized navigation projects. Most recently, by law (Water Resource Development Acts of 1986, 1990, 1992 and 1996) and administrative policy, environmental protection has been designated as one of the primary missions of Civil Works (along with navigation and flood control). In response to this new primary mission, the ACOE has established an aggressive program of ecosystem restoration studies and project implementation throughout the nation.

Consideration of WSR status/potential and associated requirements are an integral part of the planning, project recommendation, and selection process for civil works. However, reallocation or modifications of water flows, even for environmental protection/ecosystem restoration projects, must be compatible with existing purposes. Any need to change flow/water allocations from original purposes would require legislation.

Development of hydropower by the ACOE occurs when: (1) non-federal development is impractical; and (2) addition of hydropower purposes maximizes sustained public benefits for all desirable purposes, including power. Non-federal power developments may be constructed at ACOE projects through the FERC-licensing process. Additionally, it is ACOE policy to encourage non-federal interests to develop such hydropower potential where it is feasible and not authorized for federal development.

The ACOE's regulations are found at 33 CFR 320-330. Section 404 of the CWA authorizes the ACOE to regulate, through permits, the discharge of dredged or fill material into waters of the United States, including wetlands. Section 10 of the Rivers and Harbors Act of 1899 authorizes the ACOE to regulate, through permits, structures and work in navigable waters of the United States. The scope of the ACOE jurisdiction pursuant to these regulatory authorities is defined at 33 CFR 328-329. ACOE permit applications for activities in WSRs are subject to the provisions of Section 7 of the WSRA.

Regulated activities are controlled by a permit review process. An individual permit, which includes a public comment process, is usually required for projects with more than minimal impacts. For discharges that will have only minimal adverse effects, the ACOE often grants general permits. These may be issued on a nationwide, regional or state basis for particular categories of activities as a means to expedite the permitting process (e.g., minor road crossings,

utility line backfill and bedding). However, all types of ACOE permits for water resources projects require a written determination by the river-administering agency.

Coordination Processes: Federal assistance, as defined by the river-administering agencies, includes ACOE permits. A permit from the ACOE will require a Section 7 determination by the river-administering agency when the proposal occurs in a designated river or congressionally authorized study river and is a water resources project; i.e., affects the river's free-flowing condition. The ACOE process requires a written determination from the river-administering agency for such projects. It is very important for WSR administrators to develop a close working relationship with regional and district ACOE staff to participate in the review and evaluation process.

U.S. Coast Guard (*www.uscg.mil*)

Description: The United States Coast Guard (USCG) has broad, multifaceted jurisdictional authority for management of activities over all waters subject to jurisdiction of the United States. Navigable waters for USCG purposes are based on use or susceptibility for use as water traffic highways for substantial interstate or foreign commerce. USCG regulations that may affect WSRs include the Inland Navigation Rules, boating safety, marine sanitation devices, licensing and operational requirements for uninspected vessels, and bridges.

The USCG headquarters is in Washington, D.C., with nine district offices.

Authorities/Roles: The statutory basis for the USCG law enforcement mission (14 U.S.C. 2) is broad: "The USCG shall enforce or assist in the enforcement of all applicable federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States." These include laws pertaining to vessel numbering, casualty/accident reporting, equipment requirements, aids to navigation, inspection of small passenger vessels, licensing of operators, boating under the influence of alcohol or drugs, and permitting of bridges.

Inland Navigation Rules: The Inland Navigation Rules govern the conduct of all vessels upon the inland waters of the United States. Their primary purpose is to prevent collisions between vessels, and they specify actions to be taken by vessels in various meeting, crossing and overtaking situations. They also specify navigation lights that assist in identifying another vessel's aspect at night and any special activity in which they may be engaged.

Vessel Numbering and Casualty/Accident Reporting: Under 33 CFR Parts 173 and 174, all undocumented vessels propelled by machinery of any kind are required to be numbered by the state (or the USCG in Alaska), and accidents must be reported to the state. In addition, some states require sail-only or manually propelled vessels (e.g., canoes/kayaks) to be numbered.

Equipment Requirements: Federal requirements on equipment that must be carried on board recreational vessels are defined in 33 CFR Part 175.

Aids to Navigation: The USCG has the authority to establish aids to navigation in the navigable waters of the United States as defined in 33 CFR Part 2. In addition, the USCG may, at a state's request, designate specific bodies of water not marked by the federal government as state waters for private aids to navigation. The state may then regulate the establishment of aids to navigation in those waters, provided the aids themselves conform to the United States Aids to Navigation System.

Inspection of Small Passenger Vessels: The USCG is also responsible for the inspection of small passenger vessels and the licensing of their operations (46 CFR Subchapter T). The definition of "small passenger vessel" includes river craft operators (e.g., whitewater raft operators) carrying more than six passengers, including at least one passenger for hire; chartered with crew provided and more than six passengers; and chartered with no crew and carrying more than 12 passengers. Licensing enables the USCG to ensure that vessel operators possess relevant skills and experience for safe operation and that all safety equipment is on board. One opportunity presently being explored is the ability of the USCG to secure legislation to allow third-party certification of river craft on remote waters (i.e., allow the river-administering agency to inspect river craft on remote waters).

Licensing of Operators: The operator of a boat carrying no more than six passengers, at least one of whom must be a passenger for hire, is required to hold a license as an operator of uninspected passenger vessels. If more than six passengers, at least one of whom must be a passenger for hire, the operator must hold a license as a master. These licenses may be limited if the nature of the boat's operation do not warrant the imposition of all prerequisites for the full-scope license. Commercial boat operators should review their intended operations with a USCG Marine Safety Office for a determination of the applicable requirements.

Boating Under the Influence of Alcohol or Drugs (BUI): USCG enforcement of BUI under 46 U.S.C. 2302(c) and 33 CFR Part 95 is conducted in conjunction with normal operations. Violations may result in issuance of a civil penalty citation, detention in lieu of arrest (subsequent transfer to state or local enforcement officials), or arrest. On WSRs, enforcement of this law would primarily fall to the federal river-administering agencies or to state officers (most states also have BUI laws).

Permitting of Bridges: Under the several federal bridge statutes, the USCG is responsible for ensuring that bridges and causeways across navigable waters of the United States provide for the reasonable need of navigation. Functional workload activities which accomplish this statutory mandate include:

- Approval of the location and clearances of bridges through a permitting process for the construction, modification, maintenance and operation of bridges to provide for the reasonable needs of navigation.
- Regulating the operation of drawbridges to balance the needs of both land and marine traffic.
- Removing or altering bridges which have become unreasonable obstructions to navigation through no fault of the owner.
- Regulating the lighting and marking of bridges.
- Ensuring compliance with the NEPA and other federal environmental control laws as may be applicable to bridge actions.

Notice and opportunity for comment is afforded all interested parties on proposed bridge projects and drawbridge operating regulations.

Coordination Processes: River-administering agencies should coordinate and formalize enforcement of all applicable state and federal laws with state boating agencies and the USCG. Agencies may be able to enforce USCG regulations through various mechanisms, including permit administration or regulatory reference. Boater education should be coordinated through state boating agencies and the USCG Auxiliary or the United States Power Squadrons. Aspects of the USCG bridge permitting process are subject to Section 7 of the WSRA, including permitting a new bridge or modifying an existing structure.