

# Resource Analysis Guidance – Wild and Scenic Rivers

September 2025



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**DEPARTMENT OF TRANSPORTATION**

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## Acronyms and Abbreviations

CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
EDU	Environmental Documents Unit
FHWA	Federal Highway Administration
MNRR	Missouri National Recreational River
MR PA	Missouri River Programmatic Agreement
NHPA	National Historic Preservation Act of 1966
NDOT	Nebraska Department of Transportation
NEPA	National Environmental Policy Act of 1969
NIOB	Niobrara National Scenic River
NPS	National Park Service
NRI	Nationwide Rivers Inventory
OHWM	ordinary high water mark
ORV	outstandingly remarkable value
TRU	Technical Resources Unit
USACE	US Army Corps of Engineers
USC	United States Code
USDA	US Department of Agriculture
USFWS	US Fish and Wildlife Service

# 1 Introduction and Purpose

The Wild and Scenic Rivers Act established the National Wild and Scenic Rivers System (National System) to preserve rivers with outstanding natural, cultural, and recreational values in a free-flowing condition for the benefit and enjoyment of present and future generations. Rivers may be designated as “wild,” “scenic,” or “recreational” by Congress or, if certain requirements are met, by the Secretary of the US Department of the Interior (Secretary of the Interior). The National System is administered by the Interagency Wild and Scenic Rivers Coordinating Council, which includes representatives of the Bureau of Land Management, National Park Service (NPS), US Fish and Wildlife Service (USFWS), and US Department of Agriculture (USDA) Forest Service. The Wild and Scenic Rivers Act ([Public Law 90-542, as amended](#)) refers to these agencies as river-administering agencies. In Nebraska, the only river-administering agencies are NPS and USFWS.

NPS also compiles and maintains the Nationwide Rivers Inventory (NRI), which is a list of “free-flowing river segments in the United States that are believed to possess one or more ‘outstandingly remarkable’ natural or cultural values judged to be of more than local or regional significance” (NPS 2024).

Two rivers in Nebraska are designated as part of the National System: the Missouri National Recreational River (MNRR; three river segments in Cedar, Dixon, Boyd, and Knox Counties) and the Niobrara National Scenic River (NIOB; two river segments in Brown, Cherry, Keya Paha, Rock, and Valentine Counties) (see Section 3). Six rivers (nine segments in Garfield, Loup, Brown, Rock, Blaine, Thomas, Hooker, Cherry, Sioux, Boyd, Holt, Keya Paha, and Sheridan Counties) in Nebraska are listed on the NRI (see Section 4). All designated and listed river segments are in northern Nebraska.

The Wild and Scenic Rivers Act is generally notable for safeguarding the special character of designated rivers and congressionally authorized study rivers (defined in Section 2.3) while also recognizing the potential for their appropriate use and development. It encourages river management that crosses political boundaries and promotes public participation in developing goals for river protection.

This “Resource Analysis Guidance – Wild and Scenic Rivers” is intended for use by Nebraska Department of Transportation (NDOT) staff, Local Public Agencies, and consultants who write National Environmental Policy Act of 1969 (NEPA) documentation or obtain permits or other approvals for NDOT-administered projects in Nebraska, collectively referred to herein as environmental analysts. NDOT is responsible for identifying Wild and Scenic Rivers and NRI-listed rivers in the vicinity of projects for which it is a proponent. After these rivers are identified, NDOT is responsible for consulting with the appropriate river-administering agency to obtain its determination of effect on Wild and Scenic Rivers, or with NPS to obtain its determination of effect on NRI-listed rivers. This guidance is applicable to highway and trail improvement projects, whether they receive federal aid or are wholly funded by the State of Nebraska.

## 2 Background

### 2.1 Legal and Regulatory Context

The Wild and Scenic Rivers Act of 1968 ([Public Law 90-542, as amended](#)) is codified at [16 United States Code \(USC\) 1271 et seq.](#) The purpose of the Wild and Scenic Rivers Act is to protect the free-flowing condition, water quality, and outstandingly remarkable values (ORV) of designated rivers and congressionally authorized study rivers. A designated river has boundaries that encompasses a waterway and land of varying widths on either side. The land adjacent to the river may be federal or non-federal land.

Section 7 of the Wild and Scenic Rivers Act provides standards of evaluation to protect designated rivers and congressionally authorized study rivers from potentially harmful effects of federally assisted water resources projects. A transportation project is a water resources project requiring a Section 7 evaluation. A water resources project, as defined in [36 Code of Federal Regulations \(CFR\) 297.3](#) (and below in Section 2.3), includes “other construction of developments which would affect the free-flowing characteristics of a [designated river] or [congressionally authorized study river].” The Interagency Wild and Scenic Rivers Coordinating Council (2004) defines water resources projects as including “bridges and other roadway construction/reconstruction projects...and activities that require a [Section] 404 [of the Clean Water Act] permit from [the US Army Corps of Engineers].” In addition, the Interagency Wild and Scenic Rivers Coordinating Council (2004) states that “any project that affects a river’s free-flowing characteristics is a water resources project” because “construction activities, including dredge and fill, will modify the waterway, although not necessarily to a great degree or damaging extent.”

Section 7(a) of the Wild and Scenic Rivers Act pertains to those river segments that have been added to the National System by Congress or by the Secretary of the Interior. There are two circumstances that apply: (1) projects that directly and adversely affect a designated river segment and (2) projects that are upstream, downstream, or on a tributary of a designated river segment. Regarding the first case, Section 7(a) states that “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” ([16 USC 1278\(a\)](#)). Regarding the second case, the act states,

**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 of a river as a component of the National Wild and Scenic Rivers System ([16 USC 1278\(a\)](#)).**

In other words, for projects upstream or downstream (or on a tributary), a determination must be made regarding whether the project will “invade the [designated] area or unreasonably diminish the scenic, recreational, and fish and wildlife values” present in the area on the date of designation ([16 USC 1278\(a\)](#)).

Section 7(b) of the Wild and Scenic Rivers Act pertains to those river segments that are congressionally authorized study rivers identified under Section 5(a). Congressionally authorized study rivers are those under study, but a report and recommendation has not been forwarded to Congress (Interagency Wild and Scenic Rivers Coordinating Council 2019; 2025a). “Section 7(b) provides essentially identical protection for congressionally authorized study rivers, except it eliminates the word ‘unreasonably’ from the standard pertaining to projects outside the designated segments, making protection during the study process stronger” (NPS 2015). There are currently no congressionally authorized study rivers in Nebraska.

The Interagency Wild and Scenic Rivers Coordinating Council’s October 2004 guidance, [Wild & Scenic Rivers Act: Section 7](#), provides the procedures to evaluate the effects of a proposed water resources project under Section 7. In addition, NPS has developed a policy to integrate the Section 7 evaluation with the NEPA process. In accordance with this policy, “NPS must become a cooperating agency in preparation of any EIS for all Federal actions that involve a water resources project that may affect an NPS managed component of the [National System]” (NPS 1998). NPS conducts a Section 7 evaluation and provides a determination to analyze the effect of a proposed water resources project on a Wild and Scenic River for which they are the river-administering agency (NPS 2021).

Section 10(a) of the Wild and Scenic Rivers Act provides another significant component of the protections afforded to rivers. Section 10(a) states, in part:

**Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, historic, archeologic, and scientific features. [16 USC 1281\(a\)](#)**

The US Department of the Interior and USDA interpreted Section 10(a) as a nondegradation and enhancement policy for all designated river areas, regardless of classification. Each component is to be managed to protect and enhance the values for which the river was designated while providing for other activities and uses that do not adversely impact or degrade those values ([47 Federal Register 39454–39461](#)).

In partial fulfillment of Section 5(d) of the Wild and Scenic Rivers Act, NPS developed the NRI in August 1982. The NRI is a registry of river segments that potentially qualify as national wild, scenic, or recreational river areas. Section 5(d)(1) 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” ([16 USC 1276\(d\)\(1\)](#)). As a result, while conducting comprehensive land management planning for their lands, agencies identify rivers eligible for the National System and submit them to NPS for inclusion on the NRI (Interagency Wild and Scenic Rivers Coordinating Council 2019). All NRI-listed waterways in Nebraska are characterized as agency-identified Section 5(d)(1) study rivers.

An [August 2, 1979, presidential memorandum](#) from Jimmy Carter (1979 presidential memorandum) requires each federal agency, as part of its normal planning and environmental review processes, to avoid or mitigate adverse effects on rivers identified in the NRI compiled by NPS. Further, agencies are required to consult with NPS prior to taking actions that could effectively foreclose wild, scenic, or recreational status for rivers on the NRI (Council on Environmental Quality [CEQ] 1980; NPS 2024).

## 2.2 Roles and Responsibilities of Agencies and Tribal Nations

Under the Wild and Scenic Rivers Act, federal agencies are to protect the free-flowing condition, water quality, and ORVs of designated rivers and congressionally authorized study rivers. Some of the most important responsibilities of the river-administering agencies under this act are evaluating projects under Section 7 and making Section 7 determinations (see Section 2.1). Agencies also have the responsibility to plan for varying degrees of intensity for the river’s protection and development based on Section 10(a) of the Wild and Scenic Rivers Act (see Section 3.3.2.2).

River management requires creative partnerships among river-administering agencies, other governmental agencies with land or resource management authorities, tribal governments, communities, nongovernmental organizations, and individuals. A Wild and Scenic River designation does not give the federal government control over the surrounding property. Roles and responsibilities of the river-administering agencies and Tribal Nations involved with Wild and Scenic Rivers in Nebraska are discussed below. Currently, all designated Wild and Scenic Rivers in Nebraska are administered by NPS or USFWS. See Section 3.3.1, Table 1 for additional detail.

## 2.21 National Park Service

NPS is a coordinating agency on the Interagency Wild and Scenic Rivers Coordinating Council and serves as the reviewing and approving agency (river-administering agency) for transportation projects that have the potential to impact river segments registered on either (1) the National System under NPS's administration; or (2) the NRI. The NPS Rivers, Trails, and Conservation Assistance Program administers the NRI. As stated previously, some of the most important responsibilities that NPS has under the Wild and Scenic Rivers Act are evaluating projects under Section 7 and making Section 7 determinations (see Section 2.1).

These responsibilities are designated to NPS via the Wild and Scenic Rivers Act and the [1979 presidential memorandum](#) to the heads of federal departments and agencies. The presidential memorandum requires each federal agency (including the Federal Highway Administration [FHWA]), as part of its normal planning and environmental review process, to avoid or mitigate adverse effects on rivers identified in the NRI and to consult with NPS prior to taking actions that could effectively foreclose wild, scenic, or recreational status for rivers listed in the NRI.

NPS uses *Reference Manual 46: Wild and Scenic Rivers* (NPS 2021) in conjunction with NPS Director's Order #46 (NPS 2015) to implement the Wild and Scenic Rivers Act. Environmental analysts should use these NPS documents in addition to NPS directives to ensure meeting NPS needs and requirements.

Responsibility for engaging the river-administering agency (NPS) in the NEPA or permitting process lies with the project proponent (NDOT). Implementation of the Wild and Scenic Rivers Act requires the river-administering agency to rigorously and consistently evaluate water resources projects.

## 2.22 US Fish and Wildlife Service

USFWS is a coordinating agency on the Interagency Wild and Scenic Rivers Coordinating Council and serves as the reviewing and approving agency (river-administering agency) for transportation projects that have the potential to impact river segments registered on the National System under USFWS's administration. As stated previously, some of the most important responsibilities that USFWS has are evaluating projects under Section 7 and making Section 7 determinations (see Section 2.1).

Responsibility for engaging the river-administering agency (USFWS) in the NEPA or permitting process lies with the project proponent (NDOT). Implementation of the Wild and Scenic Rivers Act requires the river-administering agency to rigorously and consistently evaluate water resources projects.

The USFWS (2024) *Service Manual*, in Part 611 FW 3, Wild and Scenic Rivers, guides the USFWS natural and cultural resources management of Wild and Scenic Rivers that are part of the National Wildlife Refuge System, as well as its responsibilities under Section 7 of the Wild and Scenic Rivers Act.

USFWS is also responsible for administering various other statutes, including the Fish and Wildlife Coordination Act, the Endangered Species Act, the Bald and Golden Eagle Protection Act, and the Migratory Bird Treaty Act, any of which can overlap with the values for which rivers have been designated. In NPS-administered river reaches, NPS requires that the project proponent (NDOT) coordinate with USFWS to obtain input on a project's impact on wildlife values.

## 2.2.3 Tribal Nations

Tribal Nations must be given an opportunity to comment if protected rivers may be affected by an NDOT project. The following Tribal Nations and entities in Nebraska are federally recognized by the Bureau of Indian Affairs<sup>1</sup>:

- Iowa Tribe of Kansas and Nebraska
- Omaha Tribe of Nebraska
- Ponca Tribe of Nebraska
- Sac and Fox Nation of Missouri (Kansas and Nebraska)
- Santee Sioux Nation
- Winnebago Tribe of Nebraska

### 2.2.3.1 NDOT Responsibilities

While none of the Tribal Nations in Nebraska is a river-administering agency, NPS requires the lead federal agency on a project to consult with the Tribal Nations to obtain their opinions on a project's impacts on cultural values and subsistence hunting and fishing. The Tribal Nations' opinions inform the determinations required under Section 7. NDOT, acting as the lead federal agency, consults with appropriate Tribal Nations on projects potentially affecting a Wild and Scenic River that involve tribal lands on both NPS- and USFWS-administered rivers. The Tribal Nation may choose whether or not to respond.

### 2.2.3.2 USACE Responsibilities on the Missouri National Recreational River

For projects that may affect the designated Wild and Scenic River segments of the Missouri River in Nebraska, a further requirement for consultation with Tribal Nations may occur through the US Army Corps of Engineers (USACE). If a project on the Missouri River requires a Section 404 permit from USACE (for fill in waters of the US) or needs Section 408 permission (for alteration of lands within a USACE-administered site), USACE must adhere to the 2004 [Programmatic Agreement for the Operation and Management of the Missouri River Main Stem System for Compliance with the National Historic Preservation Act, as amended](#), also known as the Missouri River Programmatic Agreement (MR PA). The MR PA requires USACE to consult with signatories, including Tribal Nations.<sup>2</sup> USACE, not NDOT, completes this consultation.

## 2.2.4 Nebraska Department of Transportation

NDOT is responsible for the planning, development, design, construction, maintenance, and administration of the Nebraska state highway system. NDOT receives federal funding for transportation projects through FHWA. NDOT is typically the project proponent and, under NEPA Assignment, acts as the lead federal agency in place of FHWA during the planning and environmental

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<sup>1</sup> This list is current as of January 2025. See <http://indianaffairs.state.ne.us/resources/tribes-of-nebraska/>, <https://www.bia.gov/regional-offices/southern-plains/tribes-served>, <https://www.bia.gov/regional-offices/great-plains/nebraska>, <https://biamaps.geoplatform.gov/Tribal-Leaders-Directory/>, and <https://www.epa.gov/tribal/tribal-contacts-region-7>.

<sup>2</sup> The MR PA mandates a process for compliance with Section 106 and Section 110 of the National Historic Preservation Act as it relates to the operation and management of the Missouri River Mainstem Reservoir System. Affected tribes and Tribal Historic Preservation Offices, State Historic Preservation Offices, the Advisory Council on Historic Preservation, and other consulting parties are provided the opportunity to participate in the development and implementation of agreements, management plans, and activities developed or required under the MR PA.

review process for many projects (FHWA approves environmental documents for projects that are more complex or have greater impacts). As such, NDOT is responsible for identifying Wild and Scenic Rivers and is responsible for inviting the river-administering agency (NPS or USFWS) to participate in NEPA, permitting, or other approval processes.<sup>3</sup>

NDOT either (1) consults with the appropriate river-administering agency to obtain its determination of effect on Wild and Scenic Rivers or (2) consults with NPS to obtain its determination of effect on NRI-listed rivers under Section 7 of the Wild and Scenic Rivers Act. Consulting responsibilities include informing a river-administering agency about a project with potential to affect a Wild and Scenic River or an NRI-listed river, providing sufficient project and site information for the river-administering agency to make its determinations, and coordinating with the relevant agency(ies) and Tribal Nations to obtain input and information.

Under NEPA Assignment, NDOT is the agency that must avoid or mitigate adverse effects on rivers listed in the NRI and that must consult with NPS prior to taking actions that could effectively foreclose wild, scenic, or recreational status for rivers listed in the NRI (see Section 2.2.1).

## 2.3 Definitions

The definitions provided below are taken from Interagency Wild and Scenic Rivers Coordinating Council publications (2004, 2017, 2018a, and 2019) and from river-administering agency publications (NPS 2021 and USFWS 2024), unless otherwise noted.

**Active channel:** “The portion of the channel commonly wetted during and above winter base flows... identified by a break in rooted vegetation or moss growth on rocks along stream margins’ (Taylor and Love 2003). The ordinary high water mark is sometimes given as the elevation defining the active channel” (USDA Forest Service 2008).

**Bed or banks:** Bed refers to the river bed, which physically confines normal flows. Banks refers to the river banks below the OHWM, which denotes the lateral confines of the river. “Water resources projects located below the [OHWM] of the river always are subject to [river-administering] agency] Section 7 review” according to the Interagency Wild and Scenic Rivers Coordinating Council Section 7 flowchart (2017).

**Classification:** Rivers in the National System are classified as wild, scenic, or recreational according to Section 2(b) of the Wild and Scenic Rivers Act. The classifications refer to the degree of development along the river at the date of designation, not to wilderness, scenery, or recreational activities. Rivers in the National System are referred to as “Wild and Scenic Rivers” without regard to actual classification. However, classification is an important distinction because it has a direct effect on how the river is administered and whether certain activities on federally owned land within the boundaries are permissible. One or more classifications for a river segment are determined either by Congress in the river’s designation legislation or by the federal administering agency after the river is designated.

**Congressionally authorized study river:** A river that has been congressionally authorized for study by either the Secretary of the Interior or the Secretary of Agriculture under Section 5(a) of the Wild and Scenic Rivers Act.

**Designated river:** A river may be designated as “wild,” “scenic,” or “recreational” by Congress or, if certain requirements are met, by the Secretary of the US Department of the Interior (Secretary of the Interior) under Section 7(a) Wild and Scenic Rivers Act.

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<sup>3</sup> NDOT has not assumed responsibility for the Recreational Trails Program from FHWA. FHWA takes on resolution of Wild and Scenic Rivers issues for projects that use Recreational Trails Program funds.

**Free-flowing:** The Wild and Scenic Rivers Act at Section 16(b) defines “free-flowing” 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 System] shall not automatically bar its consideration for such inclusion...” ([16 USC 1286\(b\)](#)). Note that “free-flowing” is not defined as maintaining completely natural hydrologic cycles in a river system or maintaining a specific volume of water in a stream. Instead, free-flowing means that whatever flow is in the channel is not impeded by human-made structures such as dams, artificial channels, diversions, or construction projects that obstruct flow.

**Invalidate:** Encroach or intrude upon (for example, raise the water level, backing water into the river corridor). Under Section 7(a) of the Wild and Scenic Rivers Act, the river-administering agency determines whether the project would invade the designated river segment.

**Listed river:** A river or a river segment that is listed on the NRI.

**National System:** National Wild and Scenic Rivers System.

**Nationwide Rivers Inventory (NRI):** A register of river segments that potentially qualify as national wild, scenic, or recreational river areas, in partial fulfillment of Section 5(d) of the Wild and Scenic Rivers Act. These segments are found eligible or suitable for the National System through federal agency planning processes and are not protected by the Wild and Scenic Rivers Act. Instead, consultation is required pursuant to a presidential directive.

**Nondegradation:** An environmental policy of not adversely impacting or degrading the values for which a river was designated as wild and scenic.

**Official with jurisdiction:** Under Section 4(f) of the US Department of Transportation Act of 1966, the entity that owns or has administrative oversight over a property or resource (FWHA 2012).

**Ordinary high water mark (OHWM):** Generally, the applicability of Section 7 is limited to the area below the OHWM of the river. OHWM is defined in [33 CFR 328.3\(c\)\(4\)](#) as “...that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.” The lowest potential boundary of the OHWM in a river is within the active channel, especially in deeply incised systems. The highest potential upper boundary of the OHWM may be on the valley flat or floodplain outside of the active channel in locations where the flats or floodplain are inundated in more years than not. Other terms used to denote similar, but not identical, concepts include “bed and banks,” “bankfull discharge,” and “active channel.”

**Outstandingly remarkable values (ORV):** Those river-related or river-dependent scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values that have been determined to be rare, unique, or exemplary at a comparative regional or national scale.

**Recreational river or recreational river area:** Section 2(b) of the Wild and Scenic Rivers Act defines recreational rivers as “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” ([16 USC 1273\(b\)](#)).

**River (watercourses that qualify for Wild and Scenic River designation):** “A flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes” ([16 USC 1286\(a\)](#)).

**River-administering agency:** A federal agency charged with administering a component of the National System. In Nebraska, the river-administering agencies are NPS and USFWS.

**River area:** Specific to designated rivers, that portion of a river (segment or corridor) and its immediate environment comprising an area extending landward at least 0.25 mile from the OHWM. For designated rivers, the river and adjacent land within the authorized boundaries.

**River corridor:** A river and the adjacent area within the boundaries of a congressionally authorized study river, or a river and the adjacent area within 0.25 mile on each side of the banks of a congressionally authorized study river. This includes portions of undesignated tributaries within the corridor.

**Scenic easement:** A public easement, purchased by the federal government from a landowner, granting a right of the federal government “to control the use of land (including the air space above such land) within the authorized boundaries of a component of the [National System], for the purpose of protecting the natural qualities of a designated wild, scenic, or recreational river area, but such control shall not affect, without the owner’s consent, any regular use exercised prior to the acquisition of the easement” ([16 USC 1286\(c\)](#)).

**Scenic river or scenic river area:** Section 2(b) of the Wild and Scenic Rivers Act defines scenic rivers as “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” ([16 USC 1273\(b\)](#)).

**Section 4(f):** The original section of the US Department of Transportation Act of 1966 that established the requirement for consideration of park and recreational lands, wildlife and waterfowl refuges, and historic sites in transportation project development. The law, now codified in [49 USC 303](#) and [23 USC 138](#), is implemented by FHWA through [23 CFR 774](#). NDOT is responsible for complying with Section 4(f) under NEPA Assignment.

**Section 5(a):** Section 5(a) of the Wild and Scenic Rivers Act includes rivers that have been congressionally authorized for study by either the Secretary of the Interior or the Secretary of Agriculture. Generally, Section 5(a) studies must be completed and a report delivered to Congress within 3 full fiscal years following the date funding is made available for the study.

**Section 5(d)(1):** Section 5(d)(1) study rivers are rivers identified by federal agencies during the preparation of land and resource management plans as having potential to qualify as Wild and Scenic Rivers under the Wild and Scenic Rivers Act.

**Section 7:** Section 7 of the Wild and Scenic Rivers Act is the key provision that directs federal agencies to protect the free-flowing condition and other values of designated rivers (Section 7(a)) and congressionally authorized study rivers (Section 7(b)).

**Section 7 determination:** The official finding of a Section 7 evaluation. The finding either approves or prohibits a project based on the appropriate evaluation standard.

**Section 7 evaluation:** A Section 7 evaluation analyzes the effects of proposed federally assisted water resources projects on Wild and Scenic Rivers. Federal actions may not proceed unless NPS has determined in writing that the proposed project fully meets the requirements of the Wild and Scenic Rivers Act.

**Section 7(a):** Section 7(a) of the Wild and Scenic Rivers Act, which directs federal agencies to protect Wild and Scenic Rivers as designated by Congress or by the Secretary of the Interior.

**Section 7(b):** Section 7(b) of the Wild and Scenic Rivers Act, which directs federal agencies to protect congressionally authorized study rivers.

**Section 10(a):** Section 10(a) of the Wild and Scenic Rivers Act, which directs federal agencies to administer Wild and Scenic Rivers to protect and enhance the values for which the river was designated and authorizes the federal government to enter into written agreements with state and local governments to jointly manage rivers. Also known as a nondegradation and enhancement policy.

**Water resources project:** Construction of developments (including emergency repairs) that would affect the free-flowing characteristics of a designated river or congressionally authorized study river. Water resources projects located below the OHWM of a river always are subject to Wild and Scenic Rivers Act Section 7 agency review. Examples of water resources projects include, but are not limited to, bank stabilization/revetments, bridges (e.g., abutments, piers, approaches), channelization, channel restoration, culverts, dams and dam removal, dredging or excavation, fish habitat/passage restoration or enhancement, gravel mining, in-channel transmission towers, levees, pipelines, recreation facilities like boat ramps and fishing piers, water diversions/wells, and activities that USACE authorizes under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

**Wild and Scenic River:** A river and the adjacent area within the boundaries of a component of the National System pursuant to Section 3(a) or 2(a)(ii) of the Wild and Scenic Rivers Act.

**Wild river area:** Section 2(b) of the Wild and Scenic Rivers Act defines wild rivers as “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” ([16 USC 1273\(b\)](#)).

## 3 Wild and Scenic Rivers (Designated Rivers)

### 3.1 Definition and Designation

Wild and Scenic Rivers are those rivers with free-flowing conditions designated either by Congress or by the Secretary of the Interior and are classified as wild, scenic, or recreational. These labels refer to the level of development along the river, described as follows (Interagency Wild and Scenic Rivers Coordinating Council 2019; [16 USC 1273\(b\)](#)):

- 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.”<sup>4</sup>
- 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.”

Regardless of classification, each river in the National System is administered with the goal of protecting and enhancing the values that caused it to be designated. Designation neither prohibits development nor gives the federal government control over non-federal (for example, state, county, municipal, or tribal) property or private property. Designated segments need not include the entire river and may include tributaries. For federally administered rivers, the designated boundaries generally average 0.25 mile above the OHWM on either bank (see “river corridor” definition in Section 2.3).

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<sup>4</sup> There are no wild river designations in Nebraska.

Table 1 provides information on the two units designated as Wild and Scenic Rivers in Nebraska: the MNRR and the NIOB. These units are shown in Figure 1.

**Table 1. Designated Wild and Scenic Rivers in Nebraska**

Waterway	County	River-Administering Agency	Reach	ORVs	Classification (miles)
Missouri River <sup>a</sup>	Cedar, Dixon	National Park Service	Gavins Point Dam to Ponca State Park (59-Mile District)	Cultural, Fish, Recreation	Recreational (59.0)
Missouri River <sup>b,c</sup>	Boyd, Knox	National Park Service	Fort Randall Dam to Lewis and Clark Lake (39-Mile District)	Cultural, Recreation, Scenic, Ecologic	Recreational (39.0)
Niobrara River; Verdigre Creek <sup>b,c</sup>	Knox	National Park Service	Western boundary of Knox County to the confluence with the Missouri River; Confluence with the Niobrara River to the north boundary of the town of Verdigre (39-Mile District)	Cultural, Fish, Geologic, Recreation, Scenic, Wildlife, Ecologic	Recreational (28.0)
<b><i>MNRR Total</i></b>					<b><i>126.0</i></b>
Niobrara River <sup>b</sup>	Brown, Cherry, Keya Paha, Rock	National Park Service	Borman Bridge to the confluence with Chimney Creek and the confluence with Rock Creek to Nebraska State Highway 137	Fish, Geologic, Recreation, Scenic, Wildlife, Paleontology	Scenic (68.0)
Niobrara River <sup>b</sup>	Valentine	US Fish and Wildlife Service	Fort Niobrara National Wildlife Refuge	Fish, Recreation, Scenic, Wildlife, Paleontology	Scenic (8.0)
<b><i>NIOB Total</i></b>					<b><i>76.0</i></b>

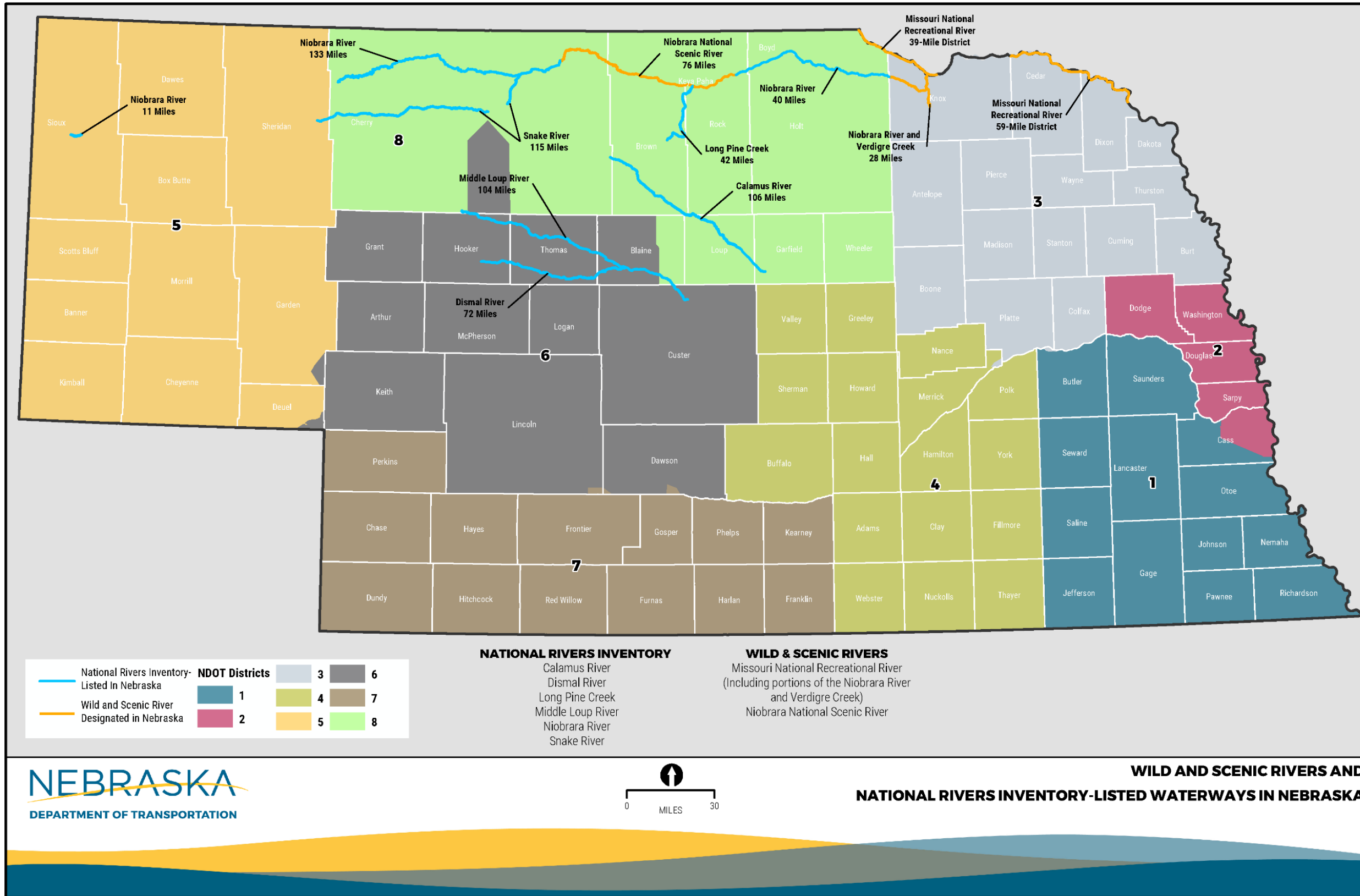
Sources: Interagency Wild and Scenic Rivers Coordinating Council 2025b, 2025c, and 2025d.

<sup>a</sup> [Public Law 95-625](#), November 10, 1978.

<sup>b</sup> [Public Law 102-50](#), May 24, 1991.

<sup>c</sup> The 39-Mile District of the MNRR includes the 39-mile segment of the Missouri River, a 20-mile segment of the Niobrara River, and an 8-mile segment of Verdigre Creek (NPS 2012).

Figure 1. Wild and Scenic Rivers and National Rivers Inventory-Listed Waterways in Nebraska



## 3.2 Applicability

The requirements of the Wild and Scenic Rivers Act apply whenever a proposed water resources project will occur below the OHWM of the river (Section 7 review). Other requirements of this act may apply when a proposed project will occur above the OHWM in the river corridor of a Wild and Scenic River (Section 10(a) review) (Interagency Wild and Scenic Rivers Coordinating Council 2017).

Requirements to coordinate with the appropriate river-administering agency apply for all water resources projects that have the potential to impact a segment of a designated river or congressionally authorized study river,<sup>5</sup> including those upstream, downstream, and on tributaries to the designated or study segment of the river (NPS 2015).<sup>6</sup>

## 3.3 Assessment Methodology

The NDOT Environmental Documents Unit (EDU) leads Wild and Scenic River coordination efforts for NDOT when NEPA documentation is prepared; otherwise the NDOT Technical Resources Unit (TRU) leads NDOT's effort. The environmental analyst identifies adjacency to a segment of a designated river (see Section 3.3.1); determines the applicability under Section 7 or Section 10(a), including upstream, downstream, and on tributaries to the designated river (see Section 3.3.2); and undertakes early coordination with the appropriate river-administering agency (see Section 3.3.3). This process should be conducted early in the project development process.

### 3.3.1 Designated River Identification

To determine the locations of designated Wild and Scenic River segments, the environmental analyst should refer to Figure 1, above, and visit <http://www.rivers.gov>. The environmental analyst is responsible for identifying the boundaries of river areas designated under the Wild and Scenic Rivers Act.

### 3.3.2 Determination of Applicability

#### 3.3.2.1 Section 7 of the Wild and Scenic Rivers Act

A water resources project, as defined in [36 CFR 297.3](#) (and in Section 2.3), means any federally assisted construction that would affect free-flowing characteristics, as defined in [16 USC 1286\(b\)](#). Examples include, but are not limited to, bridge and other roadway construction/reconstruction projects, bank stabilization projects, channelization projects, or dredge and fill projects that require a Section 404 permit ([33 USC 1344](#)). The environmental analyst determines whether a water resources project occurs within the bed and banks (that is, below the OHWM) of a Wild and Scenic River. If so, the environmental analyst must provide sufficient information to the river-administering agency so that the agency can evaluate direct and adverse effects under Section 7 (Interagency Wild and Scenic Rivers Coordinating Council. 2017). Additionally, the environmental analyst determines whether any construction will occur upstream, downstream, or on a tributary of a designated river that may "invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on the date of designation of a river" ([16 USC 1278\(a\)](#)). Things to consider when determining whether Section 7 documentation is needed for construction upstream, downstream, or on a tributary of a designated river are whether the project is visible from the designated river

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<sup>5</sup> There are currently no congressionally authorized study rivers in Nebraska.

<sup>6</sup> The Interagency Wild and Scenic Rivers Coordinating Council maintains a website that identifies designated river segments by state: <https://www.rivers.gov/map.php>.

segment, whether recreational use (in-river paddlers, for example) or scenery viewed by recreationists is affected, and whether fish or wildlife upstream or downstream are affected by project activities, including, but not limited to, erosion, sedimentation, stream channel changes, backwater creation, or changes in water quality (NPS 2025a).

### 3.3.2.2 Section 10(a) of the Wild and Scenic Rivers Act

If the environmental analyst determines a project occurs within the Wild and Scenic River's boundaries but there is no work planned below the OHWM, the analyst should provide sufficient information to the river-administering agency so that the agency can document NDOT's efforts to eliminate adverse impacts under Section 10(a). The environmental analyst should consider and provide the river-administering agency the following:

- Does the project protect a river's free-flowing condition, water quality, and ORVs, with a primary emphasis given to aesthetics, scenic, historic, archeological, and scientific features?
- What are opportunities to improve the baseline condition of river resources and values?
- Does the project provide for public recreation and other resource uses that do not diminish the values for which the river was designated as a Wild and Scenic River?

Typically, the baseline for evaluating impacts on the free-flowing condition, water quality, and ORVs is the condition on the date of designation. However, if river conditions have improved since the date of designation, assessments should be based on the improved condition, and the environmental analyst must consider those conditions in project planning. All rivers and values are equally protected under the law, and every effort should be made to ensure that project activities do not degrade river values or are consistent with the purposes for which a river was designated.

## 3.3.3 Early Interagency Coordination

Following NDOT confirmation that a project triggers a Section 7 or Section 10(a) evaluation (see Section 3.3.2), NDOT must undertake early coordination with the appropriate river-administering agency (that is, NPS or USFWS).

If the project requires NEPA evaluation under NEPA Assignment, coordination with the river-administering agency is generally initiated through a letter from NDOT that informs the agency of the nature and location of the project and requests comment. If the project is unassignable, FHWA will initiate coordination with the river-administering agency.

The environmental analyst should compile all other agency coordination and provide it to the river-administering agency. All communication with the river-administering agency should be documented and retained throughout the course of the project, including the river-administering agency's conclusion that a Section 7 or Section 10(a) determination is *not* needed, or that impacts on the Wild and Scenic River are *not* anticipated.

## 3.4 Section 7 Documentation

NDOT coordinates with the appropriate river-administering agency to determine what supporting information NDOT is to provide for the Section 7 evaluation. The river-administering agency is responsible for preparing the Section 7 determination on rivers under its administrative responsibility. However, upon mutual agreement between the river-administering agency and NDOT, NDOT may prepare a consultation package that provides all the necessary information for the Section 7 evaluation for the river-administering agency's use. NDOT should determine whether this approach is acceptable and desirable during early coordination. In any case, the evaluation documentation must be finalized and accepted by the river-administering agency as its own.

Unless the river-administering agency indicates otherwise, NDOT prepares any material related to a Section 7 evaluation following the October 2004 guidance [Wild & Scenic Rivers Act: Section 7](#) from the Interagency Wild and Scenic Rivers Coordinating Council.

### 3.4.1 Section 7 Evaluation

The Section 7 evaluation analyzes whether the proposed action or alternative(s) will cause direct and adverse effects on the ORVs for which the segment was designated, or whether the project will invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values if the project is upstream, downstream, or on a tributary. Avoidance, minimization, and mitigation measures are often required.

If NDOT prepares a consultation package that provides all the necessary information for the Section 7 evaluation for the river-administering agency's use, the information listed below should be included. If the river-administering agency prepares the Section 7 evaluation, NDOT should be ready to support the agency with the following types of information (Interagency Wild and Scenic Rivers Coordinating Council 2004):

- Description of the proposed activity and federal action (funding, permit, or approval)
- Description of the river's Wild and Scenic River status and the purpose of the Wild and Scenic Rivers Act: to protect the river from negative effects of water resource projects on free flow, water quality, and the ORVs
- Description of the river-administering agency's authority to review the project under Section 7
- Description of how the various project elements will affect each of the individual ORVs in terms of timing, duration, and intensity of impact
  - How the proposed activity will or will not directly alter in-channel conditions
  - How the proposed activity will or will not directly alter riparian and/or floodplain conditions
  - How the proposed activity will or will not directly alter upland conditions
  - How changes in on-site conditions may alter existing hydrologic or biologic processes
  - Estimate the magnitude and spatial extent of potential off-site changes
  - Definition of time scale during which potential effects will occur
- For projects upstream, downstream, or on tributaries:
  - Determination of whether the project will invade, encroach upon, or intrude upon a designated river (If the project is determined to invade the designated river, NDOT will develop measures to eliminate this unacceptable effect.)
  - Determination of whether the project will unreasonably diminish any of the designated segment's specified ORVs, water quality, or free-flowing condition
    - Possible considerations include whether the project is visible from the designated river; affects in-river paddlers; or contributes to erosion, sedimentation, stream channel changes, backwater creation, or changes in water quality in the designated river (NPS 2025a).
  - The potential effects resulting in the determinations described above
- Comparison of project effects (beneficial and adverse) and river management goals

- Effects on the river's free-flowing conditions, water quality, and ORVs for which the river was designated
- List of preparers by name, title/office, and area of expertise
- Statement that the project proponent shall consult with NPS and receive approval prior to implementing any proposed changes made subsequent to a favorable Section 7 determination before the work proceeds
- List of special protective measures or provisions that are required for the project

### 3.4.2 Section 7 Determination

The Section 7 determination is the final conclusion of the river-administering agency based on the content of the Section 7 evaluation. Except for providing information that the river-administering agency may ask for, NDOT does not have any responsibility for writing the determination. The river-administering agency typically transmits the determination to the lead federal agency, which in turn typically includes the determination in its environmental documentation (for example, the Record of Decision following an Environmental Impact Statement or a Finding of No Significant Impact following an Environmental Assessment), or it may be a stand-alone document. The river-administering agency's determination of whether the project meets the standards of the Wild and Scenic Rivers Act is required before any federal permitting, approval, or funding action (for example, a Section 404 permit). The river-administering agency may require that permits, approvals, or other agency concurrences (for example, Section 106 of the National Historic Preservation Act, Section 7 of the Endangered Species Act, or Section 401 water quality certification) be obtained prior to construction. However, because the Section 7 determination is not a final federal action, it does not require a separate decision and analysis under NEPA. If a project has direct and adverse effects that cannot be avoided or eliminated (such as through mitigation measures), then the river-administering agency cannot consent to the project (Interagency Wild and Scenic Rivers Coordinating Council 2004).

## 3.5 Section 10(a) Documentation

As discussed in Section 3.3.2.2, if a project falls within a Wild and Scenic River's boundaries but there is no work planned below the OHWM, the environmental analyst determines that a Section 10(a) evaluation is necessary. The environmental analyst documents the following and submits it to the appropriate river-administering agency:

- The proposed activity
- The project's effect on a river's free-flowing condition, water quality, and ORVs
- How the project could improve the baseline condition of river resources and values
- How the project will provide public recreation and other resource uses

The appropriate river-administering agency can review the project and its effect on the river resources and values. However, the river-administering agency has no authority to prevent the project from being constructed because its review under Section 10(a) is discretionary. For assigned projects, NDOT can choose whether to implement any suggestions from the river-administering agency. For unassigned projects, the decision whether or not to implement the river-administering agency's suggestions on specific projects requires the concurrence of FHWA. The environmental analyst determines whether a project will impact a river's resources and values and whether the impact is potentially significant and will therefore require a higher level NEPA evaluation. The decision of whether to implement the river-administering agency's suggestions is discussed in the NEPA documentation.

## 4 Nationwide Rivers Inventory (Agency-Identified Study Rivers)

### 4.1 Definition and Inventory

In partial fulfillment of the requirements under Section 5(d) of the Wild and Scenic Rivers Act, NPS has compiled and maintains the NRI. The NRI is a register of free-flowing river segments that possess one or more ORVs judged to be of more than local or regional significance and that potentially qualify as national wild, scenic, or recreational river areas. The rivers listed on the NRI are found eligible or suitable for the National System through federal agency planning processes but are not protected by the Wild and Scenic Rivers Act. Instead, the [1979 presidential memorandum](#) requires each federal agency, as part of its normal planning and environmental review processes, “to take care to avoid or mitigate adverse effects on rivers identified in the Nationwide Inventory” compiled by NPS. Further, all agencies are required to consult with NPS “prior to taking actions which could effectively foreclose wild, scenic, or recreational river status on rivers in the Inventory” (Carter 1979; CEQ 1980; NPS 2021, 2024).

Table 2 identifies the nine NRI-listed segments on six waterways in Nebraska. These waterways are shown in Figure 1, above.

**Table 2. Nationwide Rivers Inventory Listed Segments in Nebraska**

Waterway <sup>a</sup>	County	Reach	ORVs	Length (miles)
Calamus River	Garfield, Loup, Brown, Rock	Headwaters to confluence with North Loup River, excluding Virginia Smith Reservoir	Cultural, Scenic, Wildlife	106
Dismal River	Blaine, Thomas	Headwaters (confluence of North and South Forks) to confluence with Middle Loup River	Scenic	72
Long Pine Creek	Rock, Brown	Headwaters to confluence with Niobrara River	Fish	42
Middle Loup River	Blaine, Thomas, Hooker, Cherry	Headwaters (confluence of North and South Branches) to Milburn Diversion Dam	Fish, Scenic, Wildlife	104
Niobrara River	Sioux	Segment 1: Entire segment within Agate Fossil Beds National Monument	Cultural, Fish, Geologic, Scenic, Wildlife	11
	Boyd, Holt, Keya Paha, Rock, Brown, Cherry	Segment 2: Antelope Creek to Borman Bridge southeast of Valentine (beginning of Wild and Scenic River segment)	Cultural, Fish, Geologic, Historic, Recreational, Scenic, Wildlife, Other	112

Waterway <sup>a</sup>	County	Reach	ORVs	Length (miles)
	Boyd, Holt, Keya Paha, Rock, Brown, Cherry	Segment 3: State Highway 137 (ending of Wild and Scenic River segment) to confluence with Keya Paha River	Cultural, Fish, Geologic, Historic, Recreational, Scenic, Wildlife, Other	21
	Knox, Holt, Boyd	Segment 4: Keya Paha River confluence to eastern boundary of Boyd County (beginning of Wild and Scenic River segment)	Cultural, Geologic, Scenic, Wildlife	40
Snake River	Cherry, Sheridan	Headwaters to confluence with Niobrara River, excluding Merrit Reservoir	Fish, Recreational, Scenic, Wildlife	115

Sources: NPS 2024 and 2025b.

<sup>a</sup> All NRI-listed waterways in Nebraska are characterized as agency-identified, Section 5(d)(1) study rivers. They are not protected by the Wild and Scenic Rivers Act, but rather by the [1979 presidential memorandum](#).

## 4.2 Applicability

The requirements of the [1979 presidential memorandum](#) apply for any water resources project that has the potential to impact a river segment listed on the NRI. When construction is proposed within 0.5 mile of the river centerline of an NRI-listed river, NDOT must prepare an NRI evaluation that documents whether the proposed action is anticipated to have an adverse effect on the ORVs of the NRI-listed river segment using the methods described in Section 4.3.

## 4.3 Assessment Methodology

NDOT or FHWA leads coordination of the NRI evaluation, depending on whether the action is assignable. The environmental analyst identifies an NRI-listed river and its proximity to the project (see Section 4.3.1), completes an NDOT NRI evaluation to determine whether the project has the potential to affect the NRI-listed river or is within 0.5 mile from the NRI-listed river centerline (see Section 4.3.2), and enters into NRI consultation (see Section 4.3.3). The environmental analyst should conduct this assessment soon after project initiation.

### 4.3.1 Listed River Identification

The environmental analyst visits the [NRI website](#) hosted by NPS to determine whether a river segment listed on the NRI is in the project area. The environmental analyst determines whether a project is located within, across, or adjacent to the boundaries of a river listed on the NRI. If the project will not affect a listed river, no further action is necessary. If the project will affect a listed river, NDOT prepares an evaluation document following the processes in Sections 4.3.2 and 4.3.3.

### 4.3.2 Evaluation Considerations

The environmental analyst determines whether the proposed action could have an adverse effect on the ORVs of the NRI-listed river segment (either within the NRI-listed river or within 0.5 mile of the NRI-listed river centerline) using the following conditions (CEQ 1980):

1. Destruction or alteration of all or part of the free-flowing nature of the river;
2. Introduction of visual, audible, or other sensory intrusions that are out of character with the river or that will alter its setting;

3. Deterioration of water quality; or
4. Transfer or sale of property adjacent to the NRI-listed river without adequate conditions or restrictions for protecting the river and its surrounding environment.

This documentation should be compiled into a preliminary document and provided to NPS for its review for the next step of consultation.

### 4.3.3 Nationwide Rivers Inventory Consultation

NPS is generally available to help with consultation and process and evaluation requirements regarding the evaluation of impacts on NRI-listed rivers. NDOT should contact NPS for assistance in the evaluation. For projects on federal lands, NPS recommends checking with the local land manager to verify that the segment is still considered “eligible and/or suitable” in their most recent land or resource management plan.

### 4.3.4 Nationwide Rivers Inventory Evaluation and Determination

If NDOT does not hear from NPS within 30 days of initiating the consultation, NDOT will proceed with the following evaluation (NPS 2025c):

- Determine whether the proposed action could affect an NRI-listed river segment
- Determine whether the proposed action could have an adverse effect on the ORVs of the NRI-listed river segment
- Determine whether the proposed action could foreclose options to classify any portion of the NRI-listed river segment as wild, scenic, or recreational river areas

Incorporate mitigation/avoidance measures in the proposed action to the maximum extent feasible within NDOT’s authority. The environmental analyst prepares the NRI evaluation documenting the bulleted considerations in Sections 4.3.2 and 4.3.4, and submits it to NPS, requesting NPS concurrence.<sup>7</sup>

### 4.3.5 National Park Service Review and Response

NPS typically will review and respond to the submitted evaluation and determination. NDOT addresses NPS’s comments and can then proceed with its NEPA documentation. If NDOT’s NRI evaluation determines that the project is not anticipated to adversely affect a river segment listed on the NRI and NPS does not respond to a request for assistance within 30 days, NDOT may proceed with preparing and circulating its NEPA documentation and/or its permit applications. Even if NPS has not commented, NDOT is still obligated under the [1979 presidential memorandum](#) to “take care to avoid or mitigate adverse effects on rivers identified in the Nationwide Inventory” (Carter 1979). Should NPS respond after the 30-day deadline, NDOT will address the comments.

## 5 Minimization, Mitigation, and Monitoring

As with any project impact, NDOT should consider alternatives that avoid impacts (eliminate impacts) on Wild and Scenic Rivers or NRI-listed rivers. In some cases, impact is unavoidable. During coordination, the river-administering agency may make recommendations for minimizing impacts on designated Wild and Scenic Rivers and NRI-listed rivers. In addition to incorporating these

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<sup>7</sup> For unassigned projects, NDOT prepares the evaluation and consultation under the direction of FHWA. FHWA may elect to perform the consultation with other federal agencies itself.

recommendations wherever possible, NDOT should consider the following list of potential construction commitments and best management practices related to Wild and Scenic Rivers that have resulted from past coordination with NPS and USFWS:

- All specifications on plans submitted to NPS must be implemented to a reasonable degree except as conditioned herein. Any changes to project scope or design require further NPS approval in accordance with Section 7(a) of the Wild and Scenic Rivers Act. (NDOT District)
- All conditions set in the MNRR standards for bank stabilization will be followed. Any changes or deviations to the standards of the design require further NPS approval in accordance with the Section 7(a) of the Wild and Scenic Rivers Act. (NDOT District)
- Construction operations in rivers, streams, wetlands, and impoundments shall be restricted to those areas specifically shown in the contract. (Contractor, NDOT District)
- Measures shall be implemented to restrict construction debris, sediments, etc., from entering the river. Any construction debris that may incidentally enter the river channel shall be removed on a daily basis. Any debris recovered from the river channel shall be disposed of in an upland location a minimum of 1,000 feet beyond the channel in accordance with NDOT specifications or at an approved disposal site. Concrete chunks, asphalt, grindings, concrete materials, wood, rebar, and other debris that enters the river by accident should be immediately removed and taken to an appropriate disposal facility located outside of the 100-year floodplain. (Contractor)
- All temporarily placed and/or unused construction materials and equipment shall be removed upon project completion. Construction equipment and materials shall be stored outside of Wild and Scenic River boundaries where feasible. (Contractor)
- No wastewater, fuels, or other harmful fluids shall be discharged into the river. All fueling operations, lubricating, hydraulic topping off, fuel-tank purging, and equipment maintenance and repairs shall be performed at an upland site located more than 1,000 feet from the river and outside of the 100-year floodplain. (Contractor)
- All construction equipment used or stored within 1,000 feet of the river shall be inspected for hydraulic and fuel leaks on days operated within 1,000 feet of the river; leaks shall be repaired prior to operation within 1,000 feet of the river or inside of the 100-year floodplain. When not in use, fuel and hydraulic fluids shall be stored at an upland site located more than 1,000 feet from the river and outside of the 100-year floodplain. (Contractor)
- If archeological materials are discovered during activities, work must stop immediately. Consultation and coordination with the State Historic Preservation Office and NPS must occur before work resumes. (Contractor)
- Standard best practices shall include erosion and sediment control, revegetation, and scheduling to avoid disturbance on wildlife and recreational users. (Contractor)
- Any erosion that starts to occur due to activities shall be reported to NPS, and NPS will determine the best actions to proceed or stop the activities. (Contractor)
- Any temporary measures (fill areas, culverts, staging areas, etc.) used for access to construction, demolition, and debris removal areas shall be fully removed upon completion of the project. Such areas shall be returned to pre-existing conditions by seeding with indigenous plant and grass species to enable recovery and restore ecological function to these areas. Any trees removed should be replaced (except for eastern red cedar) with in-kind species and with a trunk diameter at breast height of 2 inches or greater. (Contractor)

- Aprons, tarps, shrouds, or other containment devices shall be in place during bridge demolition and bridge construction to capture falling debris. All concrete chunks, asphalt, grindings, concrete materials, wood, rebar, and other debris generated during demolition that enters the creek must be removed. If painting or sandblasting/water blasting is necessary, appropriate aprons shall be used to contain all paint, sealant, or other over-spray particles. (Contractor)
- Soil compaction around trees shall be avoided to prevent root damage. Delineating the driplines around the trees shall be done by the construction contractor, and to the best of their abilities, they shall avoid running heavy equipment within the driplines. (Contractor)

With the agreement of the river-administering agency, these practices may help to minimize or eliminate project impacts. All example mitigation measures should be modified to apply to the project activities.

## 6 Relationship to Other Regulations

### 6.1 Section 4(f) of the US Department of Transportation Act of 1966

Section 4(f) of the US Department of Transportation Act of 1966, codified in [23 USC 138](#) and [49 USC 303](#), and implemented by [23 CFR 774](#), governs the use of land from significant publicly owned parks, recreation areas, and wildlife and waterfowl refuges, and from public or private historic sites for federally funded transportation projects. Designation of a river under the Wild and Scenic Rivers Act does not automatically invoke Section 4(f) protection. NDOT should consult with the official with jurisdiction (in this case, NPS or USFWS, whichever is the river-administering agency) to determine how the river is designated, how the river is used, who owns the land (including submerged land), and how the river is described in its management plan. For example, if the river is publicly owned and designated under the Wild and Scenic Rivers Act, then it will be considered a Section 4(f) property. The final determination of whether Section 4(f) is applicable lies with NDOT. If the project is unassignable, NDOT will coordinate with FHWA, and FHWA will make the final determination of whether Section 4(f) applies.

Designated parks, recreation areas, wildlife and waterfowl refuges, and historic sites in the river corridor of a Wild and Scenic River typically are subject to Section 4(f) protection. Permitted river portage facilities (access roads, parking lots, boat launches) on NDOT right-of-way that are not associated with a Section 4(f) qualifying Wild and Scenic River may independently qualify for Section 4(f) protection as significant recreation areas. Section 4(f) does not apply to river segments identified as part of the NRI in Nebraska where there is no official management plan for that segment of the river. Privately owned lands in the river corridor of a Wild and Scenic River are not subject to Section 4(f) protection except where significant<sup>8</sup> historic and archeological sites important for preservation are present on private land (FHWA 2012; NPS 2021).

### 6.2 Section 106 of the National Historic Preservation Act of 1966

Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires federal agencies to consider the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. Wild and Scenic Rivers may possess

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<sup>8</sup> Significant is defined at [23 CFR 774.11\(c\)](#). For purposes of Section 4(f), a historic site is significant only if it is listed in or eligible for listing in the National Register of Historic Places. Archeological sites must be listed in or eligible for listing in the National Register of Historic Places and warrant preservation in place.

cultural and historic ORVs that are also protected under the NHPA. Within the river corridor of a Wild and Scenic River, both NHPA Section 106 and Wild and Scenic Rivers Section 7 may apply to federally assisted projects involving designated historic districts, sites, buildings, structures, and objects (Interagency Wild and Scenic Rivers Coordinating Council 2018b).

FHWA or NDOT will work with the river-administering agency to address Wild and Scenic Rivers Act Section 7 requirements at the same time they are complying with other environmental and cultural resource requirements, including Section 106 of the NHPA. During such situations, FHWA or NDOT will seek collaborative solutions that fully address the mandate of both the Wild and Scenic Rivers Act and the NHPA (NPS 2021).

### 6.3 Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899

Section 404 of the Clean Water Act requires USACE to regulate, through permits, the discharge of dredged or fill material into waters of the United States, including wetlands ([33 CFR 320–330](#)). Section 10 of the Rivers and Harbors Act of 1899 requires USACE to regulate, through permits and approvals, structures and work in navigable rivers of the United States ([33 CFR 328–329](#)). A permit from USACE requires a Section 7 determination by the river-administering agency (NPS; Interagency Wild and Scenic Rivers Coordinating Council 2004). USACE will not issue a Section 404 Clean Water Act individual or nationwide permit or a Section 10 permit without receiving a positive Section 7 determination from NPS.

The 2021 Section 404 Nationwide Permits require General Condition 16 for Wild and Scenic Rivers. General Condition 16 states that for any project that occurs in a designated or study river, a pre-construction notification must be submitted to USACE for all Section 404 nationwide permits. The river-administering agency must provide a positive Section 7 determination for the project prior to USACE granting the permit ([82 Federal Register 1860–2008](#)).

In some emergency situations, NDOT has obtained “after-the-fact” permits under Section 404 (for example, the 2011 Missouri River floods and the emergency riprap placement along Nebraska Highway 12). This type of permitting action is still subject to a Section 7 determination and represents an opportunity for NPS to ensure that a project is consistent with the purposes of the Wild and Scenic Rivers Act (NPS 2021).

### 6.4 Section 401 of the Clean Water Act

The Nebraska Department of Water, Energy, and Environment administers the Section 401 Water Quality Certification Program in accordance with Section 401 of the Clean Water Act and Nebraska Administrative Code Title 120 – Rules and Regulations Pertaining to Certification by the State of Nebraska. The program evaluates applications for federal Section 404 permits. The Nebraska Department of Water, Energy, and Environment’s review determines whether the proposed activity complies with Nebraska Administrative Code Title 117 – Nebraska Surface Water Quality Standards. If the activity is likely to violate the standards, conditions for complying with Title 117 will be issued with the certification, or certification will be denied. NDOT should review the state classification of the impacted river and determine through coordination with the Nebraska Department of Water, Energy, and Environment if an individual Section 401 water quality certification is necessary.

## 6.5 Organic Act of 1916 and National Wildlife Refuge System Administration Act of 1966

Under Section 10(c) of the Wild and Scenic Rivers Act, any component of the National System that is administered by the Secretary of the Interior through NPS is considered a part of the National Park System. Any component of the National System that is administered by the Secretary of the Interior through USFWS is considered a part of the National Refuge System. National Park System lands are subject to the Organic Act of 1916 ([54 USC 100507](#)), and National Refuge System lands are subject to the National Wildlife Refuge System Administration Act of 1966 ([16 USC 668dd–668ee](#)).

## 7 Agency Contacts

For Wild and Scenic Rivers Act coordination, contact the appropriate NPS superintendent at [MNRR](#) and [NIOB](#).

For NRI coordination, contact the [NPS Midwest Regional Office NRI coordinator](#) using a search for Wild and Scenic Rivers Regional Contacts.

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