

**Q&As Relating to Wild & Scenic River Eligibility, Suitability, and
Fish Passage Barrier Projects**



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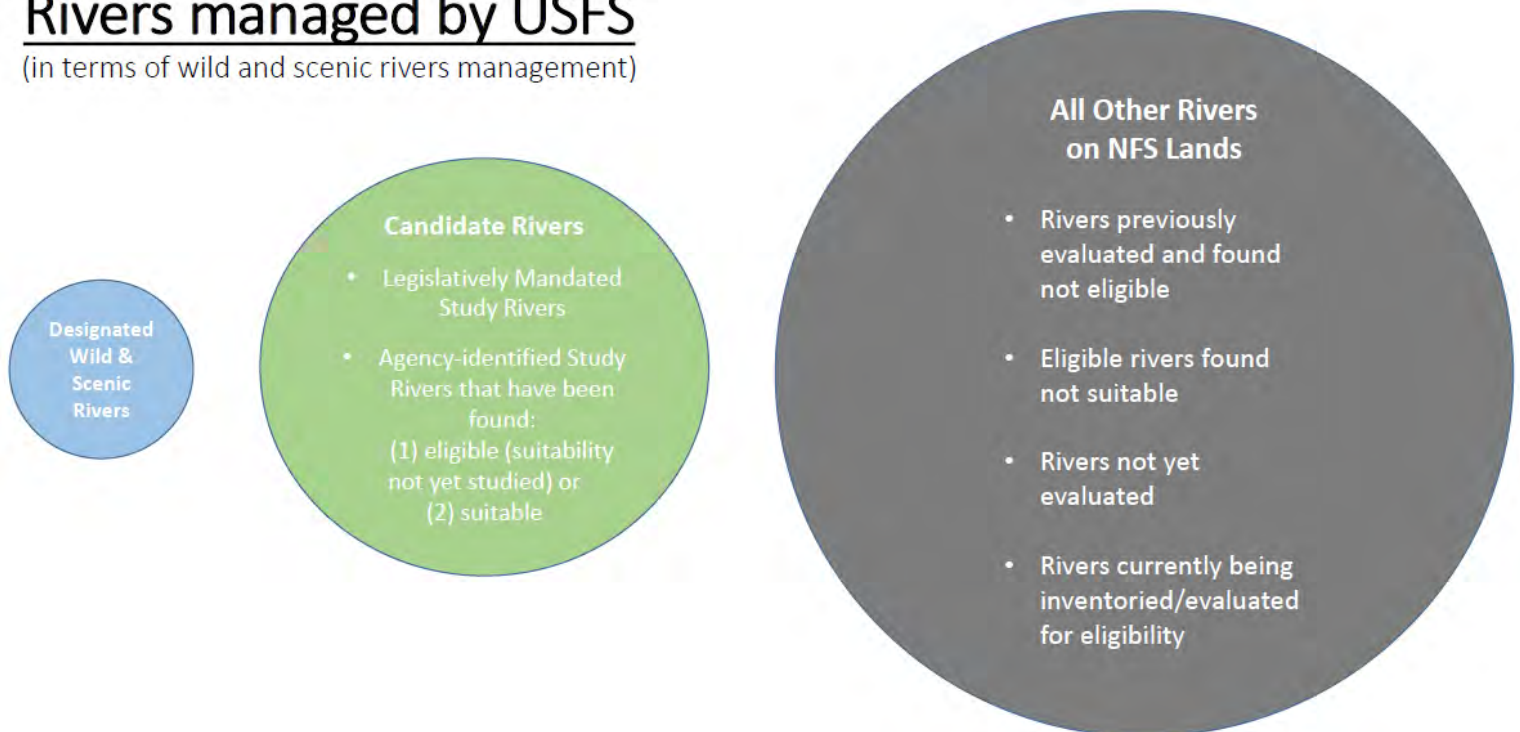
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This document is intended to clarify how fish passage barrier projects affect the eligibility and suitability of rivers for future designation under the Wild and Scenic Rivers Act. The type of fish passage barrier projects considered here protect native fish species from predation, interbreeding and/or competition by nonnative fish species. Although varying in design, these fish passage barriers typically have the potential to affect a river’s free-flowing condition, which is a core component of wild and scenic river eligibility.

The below figure represents the broad categories and sub-categories of rivers and streams managed by the Forest Service---framed in relation to wild and scenic river status. **The primary focus of this document is on the category depicted by the green circle, “Candidate Rivers.” In particular, this document addresses questions concerning candidate rivers that are agency-identified study rivers and have been found eligible (suitability not yet determined) or suitable.** However, distinctions are also made between the processes and management requirements that apply to each of the three categories (and their sub-categories). In addition, while fish passage barrier projects are emphasized here, many of the responses have broader applicability to other “water resources projects.” It is recommended that answers for specific projects be sought in coordination with Forest Service Wild & Scenic Rivers and Fisheries Program Managers.

Rivers managed by USFS

(in terms of wild and scenic rivers management)



1. Are fish passage barrier projects considered “water resources projects” under the Wild and Scenic Rivers Act and Forest Service policy?

Yes, assuming the project involves any construction below the river’s ordinary high-water mark and is federally assisted (i.e., proposed, funded or permitted by the Forest Service or another federal agency). Forest Service regulations (36 CFR 297) define a “water resources project” and other key terms in Section 7 of the Wild and Scenic Rivers Act. In addition to project works licensed under the Federal Power Act, a water resources project includes “...other construction of developments which would affect the free-flowing characteristics of a wild and scenic or study river.”

2. Can rivers or streams with existing or newly proposed fish passage barrier projects, or fish passage barrier maintenance/reconstruction projects be eligible or suitable for future designation?

It depends. Fish passage barriers do not render a river ineligible for inclusion in the National Wild and Scenic Rivers System if free-flow conditions are maintained or there is only a minor impact (FSH 1909.12, 84.3(8)). Fish passage barriers may be designed such that they either do not modify the free-flowing condition or have only a minor impact on the free-flowing condition. However, such designs may not be feasible or meet fisheries objectives for the project in some cases. Fish passage barrier maintenance or reconstruction projects do not negatively affect eligibility or suitability if they have the same or less effect to the (1) free-flowing condition, (2) the identified outstandingly remarkable values (ORVs), and (3) the preliminary classification, if the river has already been found eligible.

3. Is an existing or newly proposed fish passage barrier project, or a fish passage barrier maintenance/reconstruction project consistent with interim protections or land management plan direction for eligible and/or suitable rivers?

It depends. As provided in FSH 1909.12, 84.3(8): “Any portion of a proposed wildlife or fisheries restoration or enhancement project that has the potential to affect the river’s free-flowing character must be evaluated as a water resources project.” Therefore, a fish passage barrier project’s consistency with management of eligible and/or suitable rivers would depend on the outcome of the water resources project analysis completed for the project in question.

4. What is a “water resources project analysis”¹?

A “water resources project analysis” evaluates impacts from proposed water resources projects on agency-identified study rivers’ (eligible and/or suitable) free-flowing condition, ORVs, water quality, and preliminary classification. For water resources projects proposed within a designated river corridor, the evaluation process is outlined in FSM 2354.7 and Appendix C of the Interagency Wild and Scenic Rivers Coordinating Council’s technical report, [Wild and Scenic Rivers Act: Section 7](#). Section 7 of the Wild and Scenic Rivers Act does not require evaluation of water resource projects’ impacts to

¹ This analysis has previously been referred to as a “free flow analysis” for agency-identified study rivers to distinguish it from a “Section 7 analysis” for designated rivers. However, “water resources project analysis” is used here to clarify that the analysis required by agency policy for water resources project proposals on agency-identified study rivers evaluating more than just impacts to free-flowing conditions.

agency-identified study rivers. However, Forest Service policy (FSH 1909.12, 84.2 and 84.3) requires proposed water resources projects to be evaluated for these rivers in order to determine if there are adverse effects to free-flow condition, identified ORVs, water quality, and preliminary classification.

5. What is the definition of “free flowing” used to assess water resources project impacts?

FSH 1909.12, 82.71 utilizes the Wild and Scenic Rivers Act (Section 16) definition of “free flowing”:

...existing or flowing in natural condition without impoundment, diversion, straightening, riprapping, or other modification of the waterway. The existence, however, of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the national wild and scenic rivers system shall not automatically bar its consideration for such inclusion: Provided, That this shall not be construed to authorize, intend, or encourage future construction of such structures within components of the national wild and scenic rivers system.

6. Who should be involved in a “water resources project analysis,” and who is the deciding official when reviewing water resources projects on agency-identified eligible and suitable rivers?

Typical specialists key to conducting a free-flow analysis include fisheries biologists, hydrologists, recreation specialists, landscape architects, engineers and other related experts commensurate with the potential resources affected and complexity of the water resources project. Reviewers may include additional staff and disciplines. The analysis should be reviewed by the regional wild and scenic rivers and fisheries program managers prior to decision and signature by the appropriate local line officer. The authority for a water resources project determination on an agency-identified study river rests with whoever is responsible for the site-specific barrier decision (typically the local line officer). This differs from the authority for Wild and Scenic Rivers Act Section 7 determinations on designated rivers, which typically is a non-delegable Regional Forester responsibility. See FSM 2354.74(a-b) for further direction.

7. Do all fish passage barrier projects adversely affect free-flow condition, ORVs, water quality, or preliminary classification?

No. Designs that either maintain or result in only minor effects to free-flow condition, ORVs, water quality, or preliminary classification would not negatively impact a river’s eligibility or suitability. Fish passage barrier project designs most likely to not adversely affect free-flowing condition, ORVs, water quality, or preliminary classification are those that:

- Mimic the effects of naturally occurring events such as trees falling in and across the river (including the formation of wood jams), boulders tumbling in or moving down the river course, exposure of bedrock outcrops, bank sloughing or undercutting, bar formation (including island building), and the opening or closing of secondary channels (including oxbow development).

- Do not impede natural channel processes, such as bank erosion, bar formation/island building, bed aggradation/degradation, channel migration, or the transport of sediment, wood and ice.
- Incorporate specific design elements to protect identified ORVs. For example, if an eligible or suitable river has boating as an identified recreation ORV, then design elements for the fish passage barrier would be tailored to avoid interference with that use. Similarly, if scenery is an identified ORV, then design elements would be incorporated to maintain the eligible or suitable river's ORV scenic values.
- Protect water quality during the construction period. Temporary increases in turbidity are allowable during construction provided that the increase does not permanently impair water quality or have an adverse effect on other river values.

8. How do interim protection and water resources project analysis requirements apply to fish passage barrier project proposal for those categories of rivers depicted in the gray circle (“All Other Rivers on NFS lands”), such as those rivers that:

a) were previously evaluated and found not eligible?

Interim protection and evaluation requirements under agency policy do not apply.

b) were found eligible but found not suitable?

Interim protection and evaluation requirements under agency policy do not apply.

c) have not yet been evaluated for eligibility?

Interim protection or evaluation requirements under agency policy do not apply; however, a water resources project analysis could be utilized to assess whether such a project would impact the river's eligibility for future designation.

d) are currently being inventoried/evaluated for eligibility?

Interim protection and evaluation requirements under agency policy do not apply until a finding determines rivers are eligible; however, a water resources project analysis could be utilized to assess whether such a project would negatively affect the river's eligibility for future designation.

9. Is there a requirement to evaluate a proposed fish passage barrier project off National Forest System land but above or below a(n):

a) agency-identified eligible or suitable river?

No

b) legislatively mandated study river?

Yes, if the proposed project is a water resources project (see Question #1) and has the potential to invade the area or diminish the scenic, recreational, and fish and wildlife values. See Section 7(b) of the Wild and Scenic Rivers Act.

c) Designated wild and scenic river?

Yes, if the proposed project is a water resources project (see Question #1) and has the potential to invade the area or diminish the scenic, recreational, and fish and wildlife values. See Section 7(a) of the Wild and Scenic Rivers Act.

10. What should occur when a proposed fish passage barrier project on an agency-identified eligible river is determined to adversely affect free-flowing condition or ORVs? Can a responsible official allow the project to go forward?

The responsible official should not approve the project for implementation as proposed.

Options to proceed are:

- a) The proposed project design may be revised for additional analysis and reconsideration; or
- b) If it is desirable for the project to move forward as is, the administrative unit should accelerate the river's suitability study and make a decision on whether to recommend the river for designation.
 - i. If the river is found suitable, then the responsible official should not approved the project for implementation as proposed (FSH 1909.12, 83.1).
 - ii. If the river is found not suitable, then interim protect measures for agency identified study rivers (FSH 1909.12, 84.3) no longer apply and the responsible official may allow the project to go forward.

A suitability study is intended to address, in part, whether wild and scenic river designation is the best method for protecting the river corridor (FSH 1909.12, 83.2). Therefore, it may be relevant to consider the need for fish passage barrier projects that adversely affect free-flowing condition or ORVs during a suitability study and may be a factor in a suitability determination. However, such considerations are not appropriate when evaluating river eligibility (*see* FSH 1909.12, 82.7).