Subpart C - Overview of NRCS "Special Environmental Concerns" and NRCS Policy

610.20 Introduction

A. There are many requirements for protection of natural and cultural resources that are separate from the National Environmental Policy Act (NEPA). It is important to remember that Federal actions subject to review under NEPA may also have their own individual compliance requirements under the various environmental laws and Executive orders. NRCS must ensure it complies with all applicable national, State, Tribal, and local laws, regulations, and Executive orders, as well as its own policies, when it develops conservation plans, provides technical assistance, and carries out its program authorities.

B. The term "special environmental concerns" refers to those Federal laws, Executive orders, and Governmentwide policies that apply independently to actions and activities receiving Federal financial assistance, authorizations, permissions, approvals, or permits. Examples include the Endangered Species Act (ESA); National Historic Preservation Act (NHPA); Clean Water Act (CWA); Clean Air Act (CAA); Executive Order 11990, Protection of Wetlands; and others.

C. NEPA requires that NRCS consider the effects of its actions on all aspects of the environment, but merely describing the effects of an action for purposes of complying with NEPA, and sometimes even providing for mitigation, does not satisfy these separate requirements. Therefore, this section provides an overview of Federal environmental requirements in addition to NEPA with which NRCS must be concerned whenever it provides assistance. Additional State, Tribal, and local requirements may apply in addition to those referenced here. In such cases, State Conservationists or their designee are responsible for ensuring appropriate consideration is given to those requirements, as well.

D. The NRCS-CPA-52, "Environmental Evaluation Worksheet," includes the list of "special environmental concerns" that NRCS must consider when conducting an environmental evaluation (EE) on a proposed action.

610.21 Air Quality and the Clean Air Act

A. Background

(1) Federal legislative efforts to regulate air pollution began with the passage of the Air Pollution Control Act in 1955. The Clean Air Act was originally passed in 1963 with significant amendments in 1970, 1977, and 1990. The 1990 Clean Air Act Amendments (CAAA) introduced sweeping changes to the Clean Air Act and are the basis for many of the existing air quality regulations in the United States.
(2) Since the Clean Air Act is the underlying environmental law for air quality in the United States, regulatory agencies, such as the U.S. Environmental Protection Agency (U.S. EPA) and State, Tribal, and local regulatory agencies, must promulgate specific regulations to implement the Clean Air Act. The Federal regulations promulgated by the U.S. EPA can be found in 40 CFR. Each State, Tribal, and local regulatory agency must implement regulations that are as stringent as, or more stringent than, the Federal regulations. Each of these sets of regulations address air quality concerns from many different types of air pollutant emission sources.
(3) Agricultural operations are not exempt from compliance with the Clean Air Act and associated Federal regulations. Tribal, State and local regulations have varying levels of applicability to, and requirements for, agricultural operations.

B. State Implementation Plans (SIPs)

(1) The U.S. EPA can delegate authority to implement the Clean Air Act requirements to Tribal, State, and local regulatory agencies. In order to accomplish this purpose, Tribal, State, and local regulatory agencies are required to develop SIPs. A SIP is the collection of regulations a Tribal, State, or local regulatory agency will use to address air quality concerns in its area.
(2) The extent to which a particular SIP may impact agricultural operations in an area is directly related to the local air quality issues. For example, a State with a large population of animal feeding operations may have a SIP regulation that addresses odors from these operations. Alternatively, States with a significant amount of agriculture in an area with poor air quality (such as California's San Joaquin Valley) may develop SIP regulations limiting the emissions from, or mandating regulatory controls for, agricultural sources.
(3) Among other air quality regulations, SIPs generally include regulations regarding preconstruction permits, operating permits, and emission standards for certain sources and pollutants. SIPs may also contain other regulations that are not specifically required under the Clean Air Act (such as odor or greenhouse gas regulations), and these regulations do not necessarily have to be approved by the U.S. EPA.
(4) SIP regulations that are developed with adequate public review and comment and have been approved by the U.S. EPA are considered federally enforceable. Noncompliance with federally enforceable limitations can leave an air pollutant emission source vulnerable to legal and enforcement action by the U.S. EPA; Tribal, State, and local regulatory agencies; and the general public.

C. National Ambient Air Quality Standards

(1) The Clean Air Act requires the U.S. EPA to establish National Ambient Air Quality Standards

(NAAQS) for specific pollutants. These pollutants are known as criteria pollutants and are discussed further in the following section. The U.S. EPA has promulgated the current NAAQS in 40 CFR Part 50.

(2) The NAAQS are intended to represent the maximum concentration of a particular pollutant in the ambient air (i.e., locations to which the general public has access) that will not adversely impact public health or welfare. NAAQS for a particular pollutant typically include a primary and a secondary standard. Primary NAAQS are set at levels to protect human health. Secondary NAAQS are set at levels to protect public welfare, including aesthetic, economic, and other nonhealth effects.

(3) The stringency of air pollution regulations in a particular area is based upon whether that area is in attainment (i.e., is in compliance) or nonattainment (i.e., is not in compliance) with respect to the NAAQS. Nonattainment areas will typically have more stringent control and permitting requirements than attainment areas. Additionally, nonattainment areas with a more severe level of nonattainment will have more stringent control and permitting requirements than nonattainment areas with a less severe level of nonattainment.

D. Criteria Pollutants

(1) The term criteria pollutant is used to designate those air pollutants for which health-based criteria were used to establish NAAQS. The U.S. EPA has currently promulgated NAAQS for six criteria air pollutants, but the primary criteria pollutants of concern for agriculture are ozone and particulate matter.

(2) Ozone is not typically emitted directly from air pollutant emission sources. Rather, it is formed in the atmosphere by chemical reactions. As such, emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_x) are regulated as precursors to ozone formation instead. Particulate matter may be either emitted directly (dust is a form of particulate matter) or formed in the atmosphere from other pollutants, such as ammonia from animal operations or fertilizer application, as well as NO_x, VOC, and sulfur dioxide (SO_2).

E. Overall Implications for NRCS

(1) Air pollutant emission sources in agriculture have historically been afforded lower priority in the air quality regulatory arena. However, the persistence of air quality problems in many areas of the U.S. ensures that all sources of air pollutants, regardless of industry, will become increasingly scrutinized by regulatory agencies and the general public.

(2) NRCS planners should be aware of the requirements that apply or may apply to the various agricultural operations in their particular area. NRCS involvement with projects that do not comply with applicable air quality requirements places the agency at risk of potential liability.

Click here for the Clean Air Act evaluation procedure guide sheet (Subpart H - Exhibits, Section 610.101)

610.22 Clean Water Act and Waters of the United States

A. Overview and Definitions

(1) The purpose of this section is to provide an overview of the CWA and to encourage close and early coordination with State and Federal regulatory agencies in your area. The Army Corps of Engineers and the States administer the various sections of the CWA with the oversight of the Environmental Protection Agency (EPA). Court decisions, differences in State laws and interpretation of regulations, and other factors impact how regulatory agencies implement the permit programs from State to State and district to district. Close coordination throughout the planning process can prevent significant delays in processing the permit application. The section 404 program is discussed in more detail since this program most often affects NRCS activities.

(2) The Federal Water Pollution Control Act of 1972, now known as the Clean Water Act (CWA), established several programs to regulate and reduce discharges of pollutants into waters of the United States (including wetlands). Although the list of pollutants is long, those most frequently associated with the term include fill material, sediment, excess nutrients, and harmful bacteria.

(3) The term "Waters of the United States" means—

(i) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide.

(ii) All interstate waters, including interstate wetlands.

(iii) All other waters, such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters meeting any of the following criteria:

- Are or could be used by interstate or foreign travelers for recreational or other purposes
- From which fish or shellfish are or could be taken and sold in interstate or foreign commerce
- Are used or could be used for industrial purpose by industries in interstate commerce

(iv) All impoundments of waters otherwise defined as waters of the United States under the

definition.

(v) Tributaries of waters identified in paragraphs (i) through (iv) of this section.

(vi) The territorial seas.

(vii) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (i) through (vi) of this section.

(4) Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA. (4) The term "other waters of the United States" is sometimes used simply to describe such jurisdictional waters as streams and other aquatic sites that do not meet the definition of "wetlands" as defined for CWA purposes. (Note that wetlands are defined and identified differently for various Federal and State programs.) The Corps of Engineers has the responsibility to determine if an area is a water of the United States and if an activity is subject to section 404 CWA jurisdiction. For the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA. Even if the Food Security Act designates an area as prior converted cropland (PC) it may be subject to CWA jurisdiction where wetland conditions have returned.

(5) "Special aquatic sites" are a subset of waters of the United States that are large or small areas possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. Special aquatic sites include wetlands (see Subpart H - Exhibits, Section 610.114, "Wetlands Evaluation Procedure Guide Sheet"), sanctuaries and refuges, mud flats, vegetated shallows, coral reefs, and riffle and pool complexes. These sites are generally recognized as significantly influencing or positively contributing to the overall environmental health of the entire ecosystem and receive special attention under EPA's Section 404(b)(1) guidelines. This results in increased protection under the section 404 permit process, including a more stringent alternative analysis and emphasis on avoidance and mitigation.

(6) Section 404 of the CWA established a permit program to regulate the discharge of dredged and fill material into waters of the United States. Discharge of dredged or fill material into waters of the United States is prohibited unless the action is exempted or is authorized by a permit issued by the U.S. Army Corps of Engineers (Corps) or by the State in a few cases.

(7) Under section 401 of the CWA, before a section 404 permit can be issued for an activity, the State (or Tribe) in which the activity will occur must certify that the activity will not violate State water quality standards (section 401 State Water Quality Certification).

(8) Section 402 of the CWA established the National Pollutant Discharge Elimination System (NPDES) Program, which the States also administer. Section 402 requires a permit for sewer discharges and storm water discharges from developments, construction sites, or other areas of soil disturbance.

(9) Section 303 requires States, territories, and Tribes to identify "impaired waters" and to establish total maximum daily loads (TMDLs). "Impaired waters" are waters that do not meet the water quality standards after existing regulatory programs have been applied. The TMDL specifies the maximum amount of a pollutant that the impaired water body can receive and meet water quality standards, and allocates pollutant loadings among point and nonpoint sources.

B. Regulated Activities in Waters of the United States Under Section 404 of the CWA

(1) Activities in waters that are typically regulated under section 404 include fills for development, water resource projects (e.g., dams and levees), infrastructure development, and conversion or manipulation of wetlands. Additional activities in waters of the United States that usually require permit authorization include but are not limited to mechanized land clearing, land leveling, bank stabilization, stream realignment, road and bridge construction, fills for building pads, ditch construction projects, and materials associated with excavation and backfilling operations. Fill material typically consists of earthen materials such as soil, gravel, or rocks, or other construction materials, such as concrete.

(2) Agricultural activities in waters of the United States exempt from section 404 of the CWA (See Section 404(f)) include normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices.

(i) In order to be exempt, the activities must be part of an established farming, silviculture, or ranching operation. An operation ceases to be "established" when the area has been converted to another use or has been abandoned so long that modifications to the hydrologic regime are necessary to resume operations.

(ii) In order to be considered exempt, the proposed activity must not be a part of an activity that would convert any area of the waters of the United States into a use to which it was not previously subject and impair the flow and circulation or reduce the reach of waters of the United States.

(iii) Only the Corps may determine if an activity is exempt. NRCS clients that may need a 404 permit should be advised to contact the Corps.

(3) Types of Section 404 Permits.—There are two categories of permits for those activities that are not exempted from the 404 permit process: general and individual.

(i) General Permits.—General permits typically reduce the time required for applicants to receive authorization for projects. There are two types of general permits: regional and nationwide.

- Nationwide Permits.—A nationwide permit (NWP) authorizes a category of activities throughout the nation that has been determined to have minor impacts. These permits are valid only if the conditions applicable to the permits are met. Several of the NWPs require notification to the Corps before beginning work and some require mitigation. In addition, several regional conditions or section 401 State water quality certification conditions may apply to the NWP or any part of it within a Corps district.
- Regional General Permits.—Regional general permits (RGP) are issued by the Corps for categories of activities that are similar in nature and cause minimal environmental impact (both individually and cumulatively) within a geographic region. The permits may apply to one Corps district in one or more States or portions of States. NRCS personnel should contact the appropriate Corps office for a complete listing of regional permits and conditions within their area. (As with the NWPs, notification to the Corps and mitigation may be required with some RGPs.)

(ii) Individual Permits.—Individual permits are required for discharges that are not either exempt or covered by an NWP or RGP. Individual permits may contain numerous conditions and mitigation requirements.

- The individual permit process involves a full public interest review. A public notice is distributed to all known interested persons, including State and Federal agencies. After evaluating all comments and information received, the Corps completes an EA or EIS and a final decision on the application is made.
- The permit decision is generally based on the outcome of a public interest balancing process where the benefits of the project are balanced against the detriments.
- A permit will be granted unless the proposal is found to be contrary to the public interest or it is determined that it does not meet the section 404(b) guidelines.
- Processing may take 120 days or longer.

Click here to access the Clean Water Act and Waters of the U.S. evaluation procedure guide sheet (Subpart H - Exhibits, Section 610.102)

610.23 Coastal Zone Management Areas (CZMA)

A. Coastal zone management areas are areas located within or near the officially designated "coastal zone" of a State. Generally, this includes the Atlantic, Gulf of Mexico, and Pacific coastal areas, as well as the Great Lakes. However, the National Oceanic and Atmospheric Administration's (NOAA's) Office of Coastal Zone Management approves coastal programs, and not all coastal States have a coastal zone management area.

B. Coastal zone management areas are—

(1) The coastal waters and adjacent shorelines, including the lands or waters inside and under those zones.
(2) Areas that strongly influence adjacent coastal zones of the 35 States that have coastal zone management programs.

C. Specific examples of areas included in the coastal zone are "transitional" and intertidal areas, such as salt marshes, freshwater wetlands, and beaches. Coastal zone management areas also include the connecting waters, harbors, and estuarine areas, such as bays, shallows, and marshes, as well as those waters adjacent to the shorelines, including but not limited to sounds, bays, lagoons, bayous, ponds, and the estuaries themselves.

D. The coastal zone management area extends seaward to the outer limit of the United States territorial sea (generally 200 miles). Inland, the coastal area extends only to the extent necessary to control land uses that have a direct and significant impact (effect) on coastal waters.

E. Section 307 of the Coastal Zone Management Act specifies that actions or activities within the coastal zone done by a Federal agency or on behalf of or through a Federal agency must be consistent with the State's coastal zone management plan. That is, Federal activity must not be contrary the goals and objectives that exist in an approved coastal zone management plan. The U.S. Supreme Court has upheld the so-called "consistency provision" of the act. Therefore, NRCS planning must be consistent with the State's coastal plan and be in concert with the goals, tenets, and objectives of that plan.

F. On March 9, 1993, a letter was jointly signed by the Soil Conservation Service, the Agricultural Stabilization and Conservation Service, and the Extension Service setting forth the policies for enforcement and adoption of science- and technology-based land-management measures that eliminate or control nonpoint sources of pollution. Guidance on nonpoint source pollution matters in the coastal zone is contained in EPA's "Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters" (EPA 840-B-92-002), issued in response to the Coastal Zone Act Reauthorization Amendments (CZARA) of 1990. Among other areas, the guidance covers agricultural sources, forestry sources, urban sources, marinas and recreational boating sources, and channel, dam, streambank, and shoreline sources.

Click here to access the CZMA evaluation procedure guide sheet (Subpart H - Exhibits, Section 610.103)

610.24 Coral Reefs

A. The term "Coral reefs" is defined as the species, habitats, and other natural resources associated with coral reefs in all maritime areas and zones subject to the jurisdiction or control of the United States (e.g., Federal, State, territorial, or commonwealth waters), including reef systems in the South Atlantic, Caribbean, Gulf of Mexico, and Pacific Ocean. Coral reefs are also waters of the United States as defined in the Clean Water Act.

B. Coral reefs are among the most diverse and valuable ecosystems on Earth. Reef systems are storehouses of immense biological wealth and provide economic and environmental services to millions of people as shoreline protection, areas of natural beauty, recreation and tourism, and sources of food, pharmaceuticals, jobs, and revenues.

C. Coral reefs are vulnerable to harmful environmental changes, particularly those resulting from human activities. One of the primary threats to U.S. coral reefs is pollution from land-based sources, including runoff of nutrients and sediments from watersheds adjacent to near-shore coral reef ecosystems. Present estimates are that 10 percent of all coral reefs are degraded beyond recovery; 30 percent are in critical condition and may die within 10 to 20 years, and if current conditions continue unabated another 30 percent may perish completely by 2050.

D. **Executive Order 13089, Coral Reef Protection**, was issued in 1998 in recognition of the importance of conserving coral reef ecosystems. **The Executive order created a Coral Reef Task Force** whose membership is comprised of 11 Federal agencies, including the Secretary of Agriculture. The Executive order policy states that agencies will utilize their programs and authorities to protect and enhance the conditions of such ecosystems and, to the extent permitted by law, ensure that any actions authorized, funded, or carried out by the agency will not degrade the conditions of coral reef ecosystems.

E. Subject to the availability of appropriations, NRCS actions that affect U.S. coral reef ecosystems must provide for implementation of measures needed to research, monitor, manage, and restore affected ecosystems, including but not limited to measures reducing impacts from pollution, sedimentation, and fishing. These measures must be developed in cooperation with the U.S. Coral Reef Task Force and fishery management councils and in consultation with affected State, territorial, commonwealth, Tribal, and local government agencies; nongovernmental organizations; the scientific community; and commercial interests.

F. **In 2002, the U.S. Coral Reef Task Force** adopted the "Puerto Rico Resolution," which calls for the development of 3-year local action strategies (LASs) by each of the seven member U.S. States, territories, and commonwealths. These LASs are locally driven roadmaps for collaborative and cooperative action among Federal, State, territory and nongovernmental partners that identify and implement priority actions needed to reduce key threats to valuable coral reef resources. More information about local action strategies in the member States can be found on the U.S. Coral Reef Task Force Web site.

G. The goals and objectives of the LASs are linked to those found in the U.S. National Action Plan to Conserve Coral Reefs adopted by the U.S. Coral Reef Task Force in 2000. From the 13 goals identified in the national action plan, the task force prioritized six threat areas as the focus for immediate local action: overfishing, land-based sources of pollution, recreational overuse and misuse, lack of public awareness, climate change and coral bleaching, and disease. Additional focus areas were identified in some jurisdictions.

H. Florida, Hawaii, Guam, the U.S. Virgin Islands, American Samoa, Puerto Rico, and the Commonwealth of the Northern Mariana Islands created specific local action strategies for select locally relevant threats, using the six priority focus areas as a guide. Applying a collaborative decisionmaking process based on local needs, concerns, and capacities, each jurisdiction developed strategies that contain a variety of projects designed for implementation over a 3-year period (FY 2005 to 2007).

Click here to access the Coral Reef evaluation procedure guide sheet (Subpart H - Exhibits, Section 610.104)

610.25 Cultural Resources and Historic Properties

A. Introduction

(1) Title 190, National Cultural Resources Procedures Handbook (NCRPH), Part 601, provides a detailed procedural reference and guidance on processes that NRCS, partners, and consultants use to identify, evaluate, and protect cultural resources, including historic properties, in compliance with the National Historic Preservation Act (NHPA) and several related authorities.
(2) The information below provides a summary of responsibilities related to cultural resources and historic properties. All determinations and supporting documentation should be summarized and documented on the NRCS-CPA-52 worksheet in addition to following any State-established protocols.
(3) The term "Cultural resources" as used by NRCS is considered equivalent to "historic properties" as defined by the NHPA (16 U.S.C. Section 470 et seq.) and regulations for compliance with section 106 of the NHPA (36 CFR Part 800). They include any prehistoric or historic district, site, building, structure, or object listed in or eligible for listing in the National Register of Historic Places (NRHP) maintained by the Secretary of the Interior. They also include

all records, artifacts, and physical remains associated with the NRHP-eligible historic properties. The term also includes properties of traditional cultural and religious importance to an Indian Tribe or Native Hawaiian organization that meet national register criteria. They may consist of the traces of the past activities and accomplishments of people.

(4) The Secretary of the Interior, through the National Park Service, maintains the list of NRHP properties; the State historic preservation officer (SHPO) maintains a list of NRHP properties and properties that have already been determined eligible or potentially eligible during Federal agency project planning. These lists are very incomplete, based upon incidental survey and research. Only a small fraction of the Nation's cultural resources (historic properties) have been identified and evaluated.

(5) NEPA states "…it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may:

(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(ii) Assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice…"

(6) The implementing regulations for NEPA state the following:

(i) Analysis of environmental consequences to the affected environment must include consideration of "urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures." (40 CFR Section 1502.16)

(ii) In addition, 40 CFR Section 1502.25(a)) states that to the fullest extent possible, agencies must prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the NHPA and other environmental review laws and Executive orders.

(7) When possible, NHPA compliance should be coordinated with NEPA review (see Title 420, General Manual (GM), Part 401, and 190-NCRPH, Part 601 for NRCS policy on historic and archaeological properties). As explained in NRCS's NEPA regulations (7 CFR Section 650.6), NRCS categorical exclusions do not exempt us from basic NHPA analysis to determine if a proposed project or undertaking has the potential to affect historic properties (i.e., cultural resources that meet the criteria for inclusion in the National Register of Historic Places).

(8) The NHPA, the Advisory Council on Historic Preservation's (ACHP's) regulations for compliance with section 106 of the NHPA (36 CFR Part 800), and 420-GM, Part 401, require NRCS to consider the effects of our actions and undertakings on NRHP eligible cultural resources and historic properties in consultation with specific parties. Consultation with the SHPO, Tribal historic preservation officers (THPO) and Federally recognized Tribes, including Native Hawaiians, that want to consult on agency projects, as well as other interested parties (e.g., the conservation district, the applicant, etc.), is required.

(9) According to 36 CFR Section 800.16, "Consultation means the process of seeking, discussing and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process." Thus, consultation is more than simple notification and takes place throughout the project or program planning process. NRCS has developed some State-level agreements and Tribal consultation protocols that outline the who, when, where, why, and how of consultation.

B. Governmentwide Policy

Section 2 of the National Historic Preservation Act of 1966, as amended, states it is the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian Tribes, and private organizations to—

(i) Use measures to foster conditions under which our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations.

(ii) Provide leadership in the preservation of the prehistoric and historic resources of the United States and in the administration of the national preservation program in partnership with States, Indian Tribes, Native Hawaiians, and local governments.

(iii) Contribute to the preservation of prehistoric and historic resources not owned by the Federal Government.

(iv) Encourage the public and private preservation.

(v) Assist State and local governments, Indian Tribes, and Native Hawaiian organizations to expand and accelerate their historic preservation programs and activities.

C. Agency Policy

(1) NRCS recognizes its responsibilities as a Federal agency for historic preservation and will ensure that cultural resources are appropriately considered in all NRCS actions and programs.

(2) NRCS will identify and protect cultural resources early in the planning and environmental evaluation process for all actions, activities, and programs that have the potential to affect cultural resources or historic properties listed in or eligible for listing in the NRHP.
(3) NRCS will protect cultural resources in their original location to the fullest extent practicable by avoiding impacts to resources.
(4) NRCS must take into account cultural resources that may be significant under authorities in addition to or apart from NEPA and include these analyses in the basic NEPA analysis and compliance, including but not limited to the NHPA (16 U.S.C. Section 470); American Indian Religious Freedom Act (42 U.S.C. Section 1996); Native American Graves Protection and Repatriation Act (25 U.S.C. Sections 3001-3013); Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (2000); Executive Order 13007, Indian Sacred Sites (1996); and a range of Executive orders, Presidential memoranda, and secretarial memoranda. When such resources (e.g., contemporary cultural properties, traditional cultural values, landscape, or features having religious importance) may be impacted, NRCS will consult with concerned parties to determine what practices or treatments, if any, are acceptable to the concerned parties and will document the outcome of such consultation according to the statutes and authorities under which they are considered.
(5) If agreement among consulting parties regarding acceptable treatment of identified cultural resources cannot be reached, NRCS will complete documentation of compliance and determine if continued assistance is warranted. If NRCS does determine such assistance is appropriate, it will seek consultation with the ACHP and, upon receipt of their recommendations and completion of additional compliance requirements, make a final decision on how to proceed.
(6) NRCS will inform participants about the importance of the cultural environment and, as appropriate, provide information on opportunities beyond simple compliance to enhance the understanding of the Nation's heritage.

Click here to access the Cultural Resources evaluation procedure guide sheet (Subpart H - Exhibits, Section 610.105)

610.26 Endangered and Threatened Species

A. For more detailed guidance about compliance with the Endangered Species Act of 1973, refer to Subpart G – Endangered Species Act, of this handbook.

B. Endangered and threatened species are those plant and animal species that are reduced in numbers, making extinction a high probability. The disappearance of these species would be a biological, cultural, and, in some cases, an economic loss to the Nation. The species' continued existence contributes to scientific knowledge and understanding, adds to recreational and commercial pursuits, and provides interest, purpose, and variety to human existence.

(1) The term ''endangered species'' means any species in danger of extinction throughout all or a significant portion of its range.
(2) The term ''threatened species'' means any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.
(3) The Secretary of the Interior classifies species as threatened or endangered based on the best available scientific and commercial data.
(4) Habitats may also be designated and protected as "critical habitats" when they are as essential to the conservation of a federally listed species. The Services designate the extent and location of a particular species' critical habitat.

C. Section 7(a) of ESA requires NRCS, in consultation with and with the assistance of the Secretary of the Interior, to—

(1) Utilize the Departments' and agencies' authorities to advance the purposes of the act by implementing programs for the conservation of endangered and threatened species.
(2) Ensure that its actions and activities do not jeopardize the continued existence of threatened and endangered species or result in the destruction or adverse modification of the species' critical habitat.

D. The U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) publish comprehensive notices containing the names of species that are proposed for listing as "endangered" or "threatened" under ESA. The NMFS is charged with protecting marine and anadromous species.

G. The principal hazard to endangered and threatened species is the destruction or modification of their habitats by human activities associated with industrialization, urbanization, agriculture, lumbering, recreation, and transportation.

H. NRCS Policy

(1) According to 190-GM, Part 410, Subpart B, Section 410.22E(1), "NRCS is committed to supporting its clients and partners by providing technical assistance and NRCS actions to conserve and improve natural resources on private lands. Within this framework, and consistent with legal requirements, the implementation of conservation programs through planning and application of conservation practices and measures shall provide for the conservation of:
(i) Federally listed species (endangered and threatened).
(ii) Species proposed for Federal listing.
(iii) Federal candidate species.
(iv) Federally designated and proposed critical habitat.

(v) State and Tribal species of concern and their habitats."

(2) In addition, "NRCS shall use its authorities and programs to provide for the conservation of Federal candidate and State and Tribal species of concern" (190-GM Part 410, Subpart B, Section 410.22E(7)(i)).

I. Federal Candidate Species.—When NRCS concludes that a proposed action "may adversely affect" Federal candidate species, the agency will recommend only alternative conservation treatments that will avoid adverse effects, and to the extent practicable, provide long-term benefit to the species. This applies to NRCS technical assistance, financial assistance, and any other action where NRCS has control or responsibility. If the species becomes federally listed, proposed for listing, or the critical habitat is federally designated or proposed prior to the completion of the action, the project will be halted while the necessary consultation or conferencing requirements are met.

J. Species of concern defined in 190-GM, Part 410, Subpart B, Section 410.22D(30), as those that have been protected by State or Tribal laws or regulations are also addressed in NRCS policy. NRCS must consider impacts to plant, fish, or wildlife species protected by a State or Tribe as endangered, threatened, rare, declining, sensitive, or otherwise at risk.

K. Where State or Tribal species of concern are identified during the planning process, NRCS should provide information to landowners to make them aware of the existence of State or Tribal species of concern on their lands and must recommend appropriate measures to avoid or minimize potential negative impacts to the species. When actions may adversely affect State or Tribal species of concern, the NRCS customer must agree to apply the recommended alternatives that will avoid or minimize the effect to the extent required by State or Tribal law in order to continue to receive assistance. In some cases, NRCS may have an agreement with the State or Tribal resource agency to provide additional assistance to landowners or to consult on State species of concern.

L. Because each State and Tribe has different laws regarding species of concern, State Conservationists should supplement this handbook with information and procedures for addressing State and Tribal species of concern. States must contact State and Tribal governments to identify species of concern and the NRCS actions that may have the greatest potential to affect those species and their habitats through both adverse and beneficial impacts.

Click here to access the Endangered & Threatened Species evaluation procedure guide sheet (Subpart H - Exhibits, Section 610.106)

610.27 Environmental Justice

A. The term "environmental justice" means that, to the greatest extent practicable and permitted by law, all populations are provided the opportunity to comment before decisions are rendered on proposed Federal actions. Furthermore, the principles of environmental justice require that populations are allowed to share in the benefits of, are not excluded from, and are not affected in a disproportionately high and adverse manner by, Government programs and activities affecting human health or the environment.

B. Executive Order 12898, issued February 11, 1994, requires each Federal agency to make environmental justice a part of its mission. Agencies must identify and address disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations, low-income populations, and Indian Tribes. Environmental justice must be applied throughout the United States, its territories and possessions, the District of Columbia, and the Commonwealths of Puerto Rico and the Mariana Islands.

C. Environmental justice issues encompass a broad range of impacts covered by NEPA, including impacts on the natural or physical environment and related social, cultural, and economic impacts. A social impact assessment can be an important way to identify environmental justice issues. The USDA Departmental Regulation (DR) 5600-002, Environmental Justice, provides detailed determination procedures for NEPA and non-NEPA activities and suggests social and economic effects to consider.

D. The primary means to attain compliance with environmental justice considerations is through the inclusion of low-income, minority, and Tribal populations in the planning process and by translating documents into other languages when members of the affected area do not speak English.

E. The U.S. Government has a unique legal relationship with federally recognized Indian Tribal governments. Indian Tribes are recognized as domestic dependent nations. As sovereign nations, any consultation must be conducted on a government-to-government basis. If an activity will affect an Indian Tribe or its interests, contacting your State American Indian Emphasis Program manager is recommended.

Click here to access the Environmental Justice evaluation procedure guide sheet (Subpart H - Exhibits, Section 610.107)

610.28 Essential Fish Habitat

A. Essential fish habitats (EFHs) are areas identified as being vital for sustaining marine or anadromous fish populations. They include the waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.

B. The Magnuson-Stevens Act of 1996 calls for heightened consideration of fish habitat in resource

management decisions and direct action to stop or reverse the continued loss of fish habitats. The National Marine Fisheries Service (NMFS) implements and enforces the management measures through fisheries management plans. As amended in 1986, the Magnuson Act requires regional fisheries management councils to evaluate the effects of habitat loss or degradation on their fishery stocks and take actions to mitigate such damage. In 1996, this responsibility was expanded to ensure additional habitat protection. The act requires cooperation among NMFS, the councils, fishing interests, Federal and State agencies, and others in achieving the EFH goals of habitat protection, conservation, and enhancement.

C. NRCS must consult with NMFS regarding any action or proposed action that may adversely affect an EFH.

(1) The regulations strongly encourage using existing procedures for environmental reviews in order to streamline this process. NMFS currently participates in interagency environmental coordination or consultation processes under the Fish and Wildlife Coordination Act, the National Environmental Policy Act, the Endangered Species Act, the Federal Power Act, and the Clean Water Act for many of the actions covered under the EFH mandate. Where these existing processes can satisfy the requirements of EFH consultations, such procedures will be used to meet the consultation requirements of the Magnuson-Stevens Act.
(2) In order to use an existing environmental review or consultation process NRCS must obtain a finding from NMFS that the existing, or modified, process satisfies the EFH consultation requirements of the act. Findings can be developed at the national, regional, or State level.

D. In the absence of an existing process, the regulations establish procedures to accomplish the mandated consultations.

(1) Any council may comment and make recommendations to NMFS and any Federal agency undertaking actions that may adversely affect the habitat, including EFH, of any fishery resource under its authority. The council must comment if, in its view, the action is likely to substantially impact the habitat, including EFH, of an anadromous fishery resource under its authority.
(2) After receiving information from a council or Federal or State agency concerning an action or proposed action that would adversely affect any EFH, NMFS must recommend measures to the Federal or State agency to conserve such habitat.
(3) Within 30 days of receiving an EFH recommendation from NMFS, a Federal agency must respond in writing to NMFS and any commenting councils. The response should detail the measures that will be taken to avoid, mitigate, or offset the adverse effects to EFH and explain the reasons for any actions inconsistent with the NMFS EFH recommendations.

Click here to access the Essential Fish Habitat (Magnuson-Stevens Act) evaluation procedure guide sheet (Subpart H - Exhibits, Section 610.108)

610.29 Floodplain Management

A. Floodplains are defined as lowlands or relatively flat areas adjoining inland or coastal waters, including at a minimum areas subject to a chance of flooding of 1 percent or greater in any given year.

B. The "base" floodplain is set equal to the "100-year" floodplain (the so-called "1-percent chance floodplain"). The "critical action" floodplain is defined as the 500-year floodplain (the 0.2-percent chance floodplain) where there is the presence of a facility, such as a school, hospital, nursing home, utility, or a facility producing volatile, toxic, or water-reactive materials.

C. Floodplains may be shown on maps produced by the Federal Emergency Management Agency (FEMA) and on NRCS watershed plans and floodplain management studies.

D. NRCS policy on floodplains is found in 190-GM, Part 410, Subpart B, Section 410.25, and reflects Executive Order 11988, Floodplain Management, which was signed by President Jimmy Carter on May 24, 1977. The Executive order requires that decisions by Federal agencies must recognize that floodplains have unique and significant public values. Federal agencies are instructed to consider the natural and beneficial values of floodplains and the public benefits to be derived from floodplain restoration or preservation.

E. The objectives of Executive Order 11988 are to avoid, to the extent possible, the long- and short-term adverse impacts associated with occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development where there is a practical alternative.

F. Through proper planning, floodplains can be managed to reduce the threat to human life, health and property in ways that are environmentally sensitive. Most floodplains contain areas with valuable assets that sustain and enhance human existence. Some of these assets are agricultural and forest, food and fiber, fish and wildlife, temporary floodwater storage, parks and recreation, and environmental values.

G. NRCS provides leadership and takes actions where practicable to conserve, preserve, and restore existing natural and beneficial functions and values in base (100-year) floodplains as part of the technical and financial assistance program that it administers.

Click here to access the Floodplain Management evaluation procedure guide sheet (Subpart H - Exhibits, Section 610.109)

610.30 Invasive Species

A. An invasive species is an alien species whose presence does or is likely to cause economic or environmental harm or harm to human health. As defined in Executive Order 13112, Invasive Species (February 3, 1999), an alien species includes species that are not native to a particular continent as well as not native to a particular ecosystem. Invasive species may include all terrestrial and aquatic life forms, including plants, animals, fungi, and microbial organisms.

B. The Executive order directs Federal agencies to prevent the introduction of invasive species, provide for their control, and to minimize the economic, ecological, and human health impacts that invasive species cause.

C. NRCS must not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere (190-GM, Part 414).

D. In addition to Federal and State noxious weeds lists, State, Tribal, and local governments may have developed invasive species lists. In areas where these invasive plants lists are regulatory, use of certain plants may be prohibited.

E. All NRCS actions and activities must be planned and implemented with the cooperation of stakeholders. Stakeholders include but are not limited to State, Tribal, and local government agencies; academic institutions; the scientific community; nongovernmental entities including environmental, agricultural, and conservation organizations; trade groups; commercial interests; and private landowners.

Click here to access the Invasive Species evaluation procedure guide sheet (Subpart H - Exhibits, Section 610.110)

610.31 Migratory Birds

A. The Migratory Bird Treaty Act (MBTA) of 1918, as amended, is the domestic law that affirms, or implements, the United States' commitment to four international conventions (with Canada, Japan, Mexico, and Russia) for the protection of a shared migratory bird resource.

B. Migratory birds are all wild birds found in the United States, except the house sparrow, starling, feral pigeon, and resident game birds, such as pheasant, grouse, quail, and wild turkeys. Resident game birds are managed separately by each State. A list of migratory birds is found in 50 CFR Part 10.

C. The framers of the MBTA intended to put an end to the commercial trade in birds and their feathers that, by the early years of the 20th century, had wreaked havoc on the populations of many native bird species.

D. The MBTA decreed that all migratory birds and their parts (including eggs, nests, and feathers) were fully protected. Thus, the act makes it unlawful, unless permitted by regulation, for anyone to kill, capture, collect, possess, buy, sell, trade, ship, import, or export any migratory bird, including feathers, parts, nests, or eggs. This prohibition applies to Federal agencies as well as private individuals.

E. The MBTA authorizes the Secretary of the Interior to determine when the taking of migratory birds is compatible with the terms of the Migratory Bird Treaty. This is why the U.S. Fish and Wildlife Service prescribes season and bag limit restrictions to State game agencies for migratory game species, such as waterfowl and doves. The MBTA also makes it unlawful to take migratory game birds over a baited area. Activities such as falconry and control of depredating birds are allowed by issuance of migratory bird permits from the U.S. Fish and Wildlife Service.

F. In addition to the MBTA, Executive Order 13186, Responsibilities of Federal Agencies to Protect Migratory Birds, requires NRCS to consider the impacts of planned actions on migratory bird populations and habitats for all planning activities.

G. There are other requirements protecting certain migratory birds in addition to the Migratory Bird Treaty Act and the Executive order. The Bald and Golden Eagle Protection Act provides protection to all Bald and Golden Eagles by prohibiting all commercial activities and some noncommercial activities involving bald or golden eagles, including their feathers or parts. The Endangered Species Act protects endangered migratory bird species, such as the peregrine falcon and the northern spotted owl, and makes it illegal to sell, harm, harass, possess, or remove protected animals from the wild.

H. The Bald and Golden Eagle Protection Act prohibits the take of bald and golden eagles and their nests. The definition of "take" under this law includes disturbance. With the delisting of the bald eagle under the Endangered Species Act, the U.S. Fish and Wildlife Service has issued national management guidelines to help minimize interference with bald eagles, particularly where actions may constitute disturbance. These guidelines are available on the FWS Web site.

I. As a result of these various laws and Executive orders, conservation alternatives should be designed and implemented in a manner that avoids or minimizes, to the extent practicable, adverse impacts on migratory bird resources.

Click here to access the Migratory Birds/Bald and Golden Eagle Protection Act evaluation procedure guide sheet (Subpart H - Exhibits, Section 610.111)

610.32 Prime and Unique Farmlands

A. Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, and without intolerable soil erosion, as determined by the Secretary of Agriculture. Prime farmland includes land that possesses the above characteristics but is being used currently to produce livestock and timber. It does not include land already in or committed to urban development or water storage.

B. Unique farmland is land other than prime farmland that is used for production of specific high-value food and fiber crops, as determined by the Secretary. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables.

C. Farmland, other than prime or unique farmland, is land that is of statewide or local importance for the production of food, feed, fiber, forage, or oilseed crops, as determined by the appropriate State or unit of local government agency or agencies, and that the Secretary of Agriculture determines should be considered the same as prime or unique farmland for the purposes of the Farmland Protection Policy Act.

D. The purpose of the Farmland Protection Policy Act and 7 CFR Part 658 is to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses and to ensure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government, and private programs and policies to protect farmland.

E. NRCS must use the criteria provided in regulations found at 7 CFR Section 658.5 to identify and take into account the adverse effects of Federal programs on the protection of farmland. With the help of NRCS, Federal agencies are to consider alternative actions, as appropriate, that could lessen such adverse effects on farmland conversion to nonagricultural uses. NRCS must also evaluate the effects of NRCS actions upon farmland.

Click here to access the Prime and Unique Farmlands evaluation procedure guide sheet (Subpart H - Exhibits, Section 610.112)

610.33 Riparian Areas

A. Riparian areas are ecotones that occur along streams, rivers, lakes, ponds, and wetlands. They are distinctively different from the surrounding lands because of unique soil and vegetative characteristics that are strongly influenced by free or unbound water in the soil. Riparian ecosystems occupy the transitional area between the terrestrial and aquatic ecosystems. Typical examples include floodplains, stream banks, and lakeshores. Riparian areas may exist within all land uses, such as cropland, hay land, pastureland, rangeland, and forestland.

B. Although riparian areas constitute only a fraction of the total land area, they are generally more productive in terms of plant and animal species, diversity, and biomass. Riparian areas are vital components of the ecosystems in which they occur and are extremely important for flood attenuation, hydrologic function (water quantity, quality, and timing), and fish and wildlife diversity. It is important to recognize that not all riparian areas have the same potential or react to management in the same way; therefore, they should be managed in accordance with their unique characteristics.

C. An understanding of watershed scale processes is necessary to fully understand how riparian areas function. The attributes of a watershed system, such as soils, geology, hydrology, land use, and topography, directly influence riparian area structure, function, and values.

D. Conservation planning in riparian areas requires special considerations. A resource problem within the riparian area may be the manifestation of upland management decisions. Planners working with riparian areas should consider soils, the present plant community, the site potential, geomorphology of both the stream and the watershed, hydrologic regime, fish and wildlife needs, the management of the upland areas of the watershed, and the producer's objectives.

E. Federal law does not specifically regulate riparian areas. However, portions of riparian areas, such as wetlands and other waters of the United States, may be subject to Federal regulation under provisions of the Food Security Act, the Clean Water Act, the National Environmental Policy Act, and State, Tribal, and local legislation.

F. NRCS policy (190-GM, Part 411, Section 411.3D) for riparian areas requires—

(1) Riparian area management to be integrated into plans and alternatives.
(2) Plans to maintain or improve water quality and quantity benefits, and fish and wildlife benefits provided.
(3) Development of alternatives when land user's objectives are in conflict with conservation of the riparian area resources.

Note: For NRCS policy on riparian areas, see 190-GM, Part 411. For supplemental guidance relating to riparian areas, see Riparian Areas: Environmental Uniqueness, Functions and Values. NRCS/RCS Issue Brief 11. USDA-NRCS. August 1996.

Click here **to access the Riparian Area evaluation procedure guide sheet (Subpart H - Exhibits, Section 610.113)**

610.34 Wetlands

A. Wetlands are defined differently within various Federal and State programs and for identification, delineation, and classification purposes.

(1) NRCS wetland protection policy (190-GM, Part 410, Subpart B, Section 410.26) defines wetlands as areas, natural or artificial, that have hydric soil, hydrophytic vegetation, and indicators of wetland hydrology. Generally, wetlands include swamps, marshes, bogs, many bottomland hardwood areas and similar areas.
(2) Many wetlands serve significant natural biological functions, such as food chain production, general habitat and nesting, spawning, and rearing sites for aquatic and land species. Wetlands may also serve important water quality functions, serve as flood water storage areas, and protect areas from wave action, erosion, or storm damage.
(3) Some wetland classification systems, such as "Classification of Wetlands and Deep-water Habitats of the United States" (Cowardin et al, 1979), include rivers, streams, and many open water areas.

B. It is the policy of the NRCS to protect and promote wetland functions and values in all NRCS planning and application assistance.

(1) NRCS recognizes the beneficial and varied functional attributes of the different wetland types, and as such, strives to reconcile the need for wetland protection with that of promoting viable agricultural enterprises. NRCS supports the restoration, enhancement, creation, and preservation of wetlands as important and realistic components of comprehensive conservation plans, not only on a farm-by-farm basis, but also on a watershed or landscape basis. When providing technical assistance, NRCS will conduct an environmental evaluation, considering the objectives of the client in the context of environmental, economic, and other pertinent factors.
(2) NRCS activities must comply with Executive Order 11990, Protection of Wetlands, and with NRCS policy for protection of wetlands at 190-GM, Part 410, Subpart B, Section 410.26.

C. If wetlands will be impacted by a proposed activity, NRCS will identify whether practicable alternatives exist that either enhance wetland functions and values, or avoid or minimize harm to wetlands. If such alternatives exist, the client will be given the opportunity to select one of those alternatives.

(1) If the client selects a practicable alternative, the NRCS may continue technical assistance for the conversion activity as well as the development of the mitigation plan.
(2) If a practicable alternative is not selected, NRCS may assist with the development of an acceptable mitigation plan, but no further financial or technical assistance for the wetland conversion activity may be provided.

D. In addition to NRCS requirements, activities that impact wetlands and other waters of the United States often require a section 404 permit from the Corps of Engineers prior to beginning work. Early coordination with the appropriate Corps regulatory office to determine possible permit requirements is highly recommended (see the Subpart H, Section 610.102, "Clean Water Act/Waters of the United States Evaluation Procedure Guide Sheet"). Many States also have laws restricting activities in wetlands. Prior to or concurrent with NRCS assistance, the client should obtain all necessary permits or approvals related to work in wetlands.

E. Since wetlands are highly variable and can be dry for most of the year, they can be difficult to recognize and require special training to identify. NRCS wetland delineation training courses outline the Food Security Act wetland determination procedures, which are related to, but not identical to the methods in the Corps of Engineers' Wetlands Delineation Manual (Technical Report Y-87-1, Corps of Engineers, Washington, DC) also referred to as the "Corps '87 Manual." Be aware that due to differences in legal definitions, regulations, and procedures, areas that may be regulated under the CWA may not meet the definition of wetlands under the Farm Bill and vice versa. If CWA jurisdictional wetlands or other waters of the United States may be affected by a proposed activity, use the Clean Water Act guide sheet and instruct the client to contact the Corps of Engineers.

F. Activities in wetlands that occur in base (100-year or 500-year) floodplains are subject to review under NRCS floodplain management policy at 190-GM, Part 410, Subpart B, Section 410.25, and Executive Order 11988 (see Subpart C, Section 610.109, "Floodplain Management Guide Sheet").

Click here to access the Wetlands evaluation procedure guide sheet (Subpart H - Exhibits, Section 610.114)

610.35 Wild and Scenic Rivers

A. A wild and scenic river is a free-flowing river or river-segment that has outstanding scenic, recreational, geologic, fish-and-wildlife, historic, cultural, or other similar values. National wild and scenic rivers are designated by act of Congress (Public Law 90-542) or by the Secretary of the Interior at the request of a governor as part of the National Wild and Scenic Rivers System. A listing of designated streams and stream segments can be found on the National Park Service's Wild and Scenic Rivers Web site.

B. In addition to the river segments designated as wild and scenic, many more segments are believed to possess one or more outstandingly remarkable natural or cultural values judged to be of more than

local or regional significance. Under a 1979 Presidential directive, and related Council on Environmental Quality procedures, all Federal agencies must seek to avoid or mitigate actions that would adversely affect one or more National River Inventory (NRI) segments. The NRI is a source of information for statewide river assessments and Federal agencies involved with stream-related projects and can be found at the National Park Service's NRI Web site.

C. The designation of a river and river segments under the Wild and Scenic Rivers Act provides legal protections from adverse development and provides a mechanism for management of the river's resources. The principal effect of the act is to preclude or to severely limit the construction of dams and other water resources projects that might affect the free-flowing character of the river or adversely affect the values for which a river was designated. The Presidential directive also provides protection for NRI rivers by requiring Federal agencies consider the values of these segments prior to taking actions that could exclude them from future wild, scenic, or recreational river status.

D. The Wild and Scenic designation affects the management of Federal lands in the river's corridor. Rights to future development of private lands can be purchased under land acquisition authorities. Boundaries of wild and scenic rivers are limited to no more than 320 acres per river mile and purchase of fee title within this boundary is limited to no more than 100 acres per mile.

E. Management standards or requirements have been developed for three classes of rivers: wild, scenic, and recreational.

These labels refer to the degree of development along a river, not necessarily to the type of river or how scenic or heavily used it is. The definitions of wild, scenic, and recreational from the law are as follows:

(i) 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.
(ii) 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.
(iii) 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.

F. Ongoing regular uses of private lands, particularly those existing at the time of the river's designation, are not directly affected. Most private land uses, such as homes and farms, are compatible with wild, scenic, and recreational river management. The river's management plan identifies the types of land uses and developments that are considered compatible or incompatible with the river's wild and scenic values.

G. Designation has no effect on existing water rights or irrigation systems or other existing developed facilities. New projects and alterations to existing systems, which require Federal permits, may be allowed when they will not have an adverse effect on the values for which the river was designated.

H. Generally, timber harvests and agricultural operations on privately owned lands are unaffected in wild, scenic, and recreational river designations. However, some activities may require permits or may be covered under special provisions of the management plan.

I. Every river in the national system is required to have a manager responsible for ensuring protection. The Federal river manager may assist and cooperate with States or local organizations, landowners, and individuals to plan, protect, and manage river resources. The assistance may include limited financial assistance. Management of natural and cultural values is emphasized rather than public purchasing and owning of land. A great deal of cooperation may be required, as management may include local zoning, restrictions on land use, donations of development rights to land trusts, and other methods.

Click here to access the Wild and Scenic Rivers evaluation procedure guide sheet (Subpart H - Exhibits, Section 610.115)