

NOTICE OF INTENT

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Administration of the Natural and Scenic Rivers and Historic and Scenic Rivers
(LAC 76:IX.103, 109, 111, 117, and 118)

Notice is hereby given that the Wildlife and Fisheries Commission proposes to make changes to the Administration of the Natural and Scenic Rivers Program by clarifying allowable timber harvest activities, reducing the evaluation period and the number of publications required by permit applicants, extending the term for which permits are valid, and adopting new rules for expedited permitting.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and compiling public comments and submissions for the commission's review and consideration. In the absence of any further action by the commission following an opportunity to consider all public comments regarding the proposed rule, the Secretary is authorized and directed to prepare and transmit a summary report to the legislative oversight committees and file the final Rule.

Title 76

WILDLIFE AND FISHERIES

Part IX. Natural and Scenic River Systems

Chapter 1. Administration of the Natural and Scenic Rivers and Historic and Scenic Rivers

§103. Definitions

Act—the Louisiana Scenic Rivers Act, Acts 1988, No. 947, Section 1, effective July 27, 1988, or R.S. 56:1840 et seq.

Administrator—the Secretary of the Department of Wildlife and Fisheries.

Channel Realignment—the practice by which dredging, ditching, or other means are used to shorten or reroute the natural stream course.

Channelization—the practice of changing a natural stream, or segment thereof, into a man-made ditch or canal with channels of a relatively uniform width and depth usually necessitating the removal of trees and other woody vegetation adjacent to the stream and constructed for the purpose of accelerating water runoff.

Clearing and Snagging—the practice of removing most obstructions, trees, snags and other impediments that retard the natural stream flow.

Historic and Scenic River—a river, stream, or bayou or segment thereof that has been designated by the legislature as part of the Louisiana Historic and Scenic River System.

Natural and Scenic River—a river, stream, or bayou or segment thereof that has been designated by the legislature as part of the Louisiana Natural and Scenic Rivers System.

Normal Activities—those activities on lands that do not directly and significantly degrade the ecological integrity of a natural and scenic river.

Person—an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, receiver, tutor, curator, executor, administrator, fiduciary, organization or representative of any kind, the United States Government, Federal agency, the State of Louisiana, state agency, municipality, commission, political subdivision, local governing authority or special subdivision of the State of Louisiana.

Pollutant—any substance in concentrations which tend to degrade the chemical, physical,

biological, or radiological integrity or quality of the water in a river.

Reservoir Construction—any permanent dam or impoundment which alters the shoreline of a river in the system.

River—includes rivers, streams, bayous and segments thereof and their waters, and generally those bodies of water having the characteristics of being confined within a distinct, longitudinal channel which is defined by continuous or interrupted banks and which exhibits a width to length ratio of less than one ($W/L < 1$).

Scenic Servitude—a contract between the adjacent riparian landowner and the administrator that shall be in the nature of a development agreement for the purpose of preserving the natural state of the landscape through mutual agreement on the activities which might affect the natural landscape.

Selective Harvesting—the removal of trees, either as single scattered individuals or in small groups at relatively short intervals resulting in openings generally less in width than twice the height of the dominant trees. Repeated indefinitely, selective harvesting ensures the continuous establishment of reproduction, and an uneven aged stand adequate to encourage and maintain stream shading and stream and stream bank integrity. The removal of trees either as single scattered individuals or in small groups, whereby the remaining average basal area is no less than 50 square feet per acre.

Surface Servitude—a contract between the stream owner and the administrator that shall relieve the landowner of liabilities and assure the public of access and use of the stream surface.

System—all natural and scenic rivers and all historic and scenic rivers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1842.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and

Fisheries Commission, LR 2:456 (December 1976), amended by the Department of Wildlife and Fisheries, Office of the Secretary, LR 17:680 (July 1991), amended by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR .

§109. Study and Recommendation of Natural and Scenic Rivers

A. Study and Report to the Legislature. Upon nomination for inclusion or declassification of a river by the legislature through passage of a concurrent resolution, the administrator shall study, file a report, and issue a recommendation, to the natural resource committees of the legislature regarding any river nominated for inclusion in or declassification from the system. The administrator's recommendation shall be made no sooner than eight months and no later than 12 months from the date of nomination for inclusion and no later than 120 days from the date of nomination for declassification. All recommendations shall use evaluation procedures provided for in these regulations.

B. Criteria for Study and Recommendation. In undertaking the study and making the recommendation, the administrator shall consider, but will not be limited to, the following criteria:

1. whether the river is free flowing;
2. whether the river has been channelized, cleared or snagged, realigned, inundated, or otherwise altered, within the past 25 years;
3. whether the river has a shoreline covered by native vegetation;
4. whether the river has no or few man-made structures along its banks;
5. whether the scene as viewed from the river is pleasing (i.e., primitive or rural-pastoral) or these conditions are restorable;
6. whether the river and its setting possess natural and recreational values of

outstanding quality;

7. whether the river and its setting are large enough to sustain substantial recreational use and to accommodate existing uses without undue impairment of the natural values of the resource or quality of the recreational experience;

8. whether the river will provide present and future benefits to Louisiana citizens through preserving, protecting, and enhancing its wilderness qualities, scenic beauties, and ecological regimes and its aesthetic, scenic, recreational, fish, wildlife, ecological, geological, botanical, and other natural and physical features and resources found along the river and adjacent lands;

9. whether the river receives any point source discharges that would tend to cause pollution;

10. existing uses of adjacent lands within 100 feet of the ordinary low water line of the river, and the economic impact of such usages;

11. state ownership of the bed of the river; and

12. appropriate longitudinal boundaries for the river segment to be included within the system.

C. Consultation. Prior to submission of the report and recommendation to the legislature, the administrator shall consult with the ~~Louisiana State Planning Office~~ Office of State Lands, the Department of Environmental Quality, the Louisiana Department of Culture, Recreation and Tourism, the Department of Agriculture and Forestry and other agencies that the administrator determines may have an interest in the evaluation.

D. Form of Report and Recommendation. The report and recommendation to the legislature shall:

1. be in the form of a written report;
2. include the evaluation of the criteria and the recommendation of the administrator;
3. include the written comments of other agencies; and
4. become part of the record of the decision regarding the proposed recommendation.

E. Copies of Report. The administrator shall provide copies of the report to the ~~Louisiana State Planning Office~~ Office of State Lands, the Department of Environmental Quality, the Department of Culture, Recreation and Tourism, the Department of Agriculture and Forestry, the governing authorities of those parishes through which the river flows, and all readily identifiable adjacent landowners. Upon payment to the department for reproduction costs, the administrator shall provide copies of the report to all other interested parties who have made a written request for the report.

F. Written Comments and Public Hearing. As part of the evaluation process and prior to any recommendation to the legislature, the administrator shall:

1. provide all interested parties and the public with the opportunity to submit written comment on the nomination, allowing a ~~45-day~~ 30-day comment period;
2. pursuant to the Louisiana Administrative Procedure Act, hold not less than one public hearing in the vicinity of the river nominated for inclusion in or declassification from the system to receive comments and recommendations from all interested parties and the public. The administrator shall give its first notice at least 30 days prior to the hearing;
3. notices referred to in this Section will be published once in the official journal of each parish in which the river is located ~~in three separate issues~~ and in the official state

journal; however, the comment period shall begin with publication of the notice in the official state journal. The administrator shall notify each parish governing authority of the hearing by letter to its chief executive officer. The administrator shall also give special notice of the public hearing to all readily identifiable landowners with property adjacent to the nominated stream and to other interested parties who have requested such notifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1845.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 2:456 (December 1976), amended by the Department of Wildlife and Fisheries, Office of the Secretary, LR 17:680 (July 1991), amended by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR .

§111. Management Plan

A. Period for Plan Development. Within one year from the time a river is designated as a Natural and Scenic River or a Historic and Scenic River by the legislature the administrator shall adopt and commence development of a management plan for each river or designated segment. For rivers designated prior to January 1, 1989 development of management plans will commence no later than January 1, 1990.

B. Consultation. The plans shall be developed by the administrator in consultation with the:

1. ~~Louisiana State Planning Office~~ Office of State Lands;
2. Department of Environmental Quality;
3. Department of Culture, Recreation and Tourism;
4. Department of Agriculture and Forestry; and
5. any other agency that the administrator determines may have an interest in

the plan.

C. Plan Contents. Each management plan shall be in the form of a written document, and shall:

1. be consistent with the purposes, policies, and provisions of the Scenic Rivers Act;
2. contain a clear description and delineation in narrative and graphic form (maps or photographs) of:
 - a. natural, cultural and aesthetic resources and features of the river area;
 - b. existing land and water uses;
 - c. land ownership; and
 - d. existing land and water use controls, management devices and programs;
3. set forth a detailed program to address existing features which have been identified as being important to be protected and preserved, and potential issues, problems and needs that impact, or may impact, resources and features of the river. The plan may include recommendations to federal, state, local and private entities on enhancement and reclamation of resources and features on a system river and may specify the mechanism through which the recommendations can be implemented;
4. set forth management goals, objectives, policies, standards and management guidelines for the preservation of the system river;
5. be reviewed every five years; and
6. provide for the continuing involvement of the public in the development,

implementation and administration of the plan.

D. Copies. The administrator shall provide copies of the plan to:

1. ~~Louisiana State Planning Office~~ Office of State Lands;
2. Department of Environmental Quality;
3. Department of Culture, Recreation and Tourism;
4. governing authorities of those parishes through which the river flows;
5. Department of Agriculture and Forestry;
6. all readily identifiable adjacent landowners; and
7. interested parties who have made a written request.

E. Written Comments and Public Hearing. Prior to adoption of the final management plan, the administrator shall:

1. provide all interested parties and the public, the opportunity to submit written comment on the draft management plan, allowing a ~~45-day~~ 30-day comment period;
2. pursuant to the Louisiana Administrative Procedure Act, hold not less than one public hearing in the vicinity of the river included in the management plan to receive comments and recommendations from all interested parties and the public. The administrator shall give the first notice at least 30 days prior to the hearing;
3. notices referred to in this Section will be published once in the official journal of each parish in which the river is located ~~in three separate issues~~ and in the official state journal; however, the comment period shall begin with publication of the notice in the official state journal. The administrator shall notify each parish governing authority of the hearing by letter to its chief executive officer. The administrator shall also give special notice of the public hearing to all readily identifiable landowners with property adjacent to the nominated stream and

to other interested parties who have requested such notifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1845.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 2:456 (December 1976), amended by the Department of Wildlife and Fisheries, Office of the Secretary, LR 17:681 (July 1991), amended by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR .

§117. Permitted Activities

A. All activities that may detrimentally affect or significantly degrade the wilderness quality, aesthetic values, or the ecological integrity of a system river shall be subject to a permit except:

1. those prohibited uses set forth in §115 of these regulations;
2. normal activities of private landowners within the boundaries of their property as provided by R.S. 56:1852(B); and
3. ~~harvesting of trees in accordance with R.S. 56:1854, provided that prior notification of any commercial harvesting of trees shall be given to the Louisiana Office of Forestry.~~ Select harvesting of trees adjacent to or within the 100' buffer of a Scenic River in accordance with R.S. 56:1854, provided that the harvest methodology is compliant with the definition of selective harvesting under §103 of these regulations and that written notification of selective harvesting is given to the Louisiana Office of Forestry and LDWF Scenic Rivers prior to commencement.

B. Activities requiring permits shall include, but not be limited to, the following activities:

1. crossings by roads, bridges, railroads, pipelines or utilities;

2. sharing of land and airspace by such roads, railroads, pipelines and utilities;
3. point source discharge of any pollutant (prior to any person applying to the Department of Environmental Quality for a permit to discharge any pollutant into a system river, the person shall give written notice to the administrator);
4. prospecting, drilling and mining for nonrenewable natural resources;
5. structures and buildings of any kind or size;
6. piers, boat slips, bulkheads and landings;
7. commercial uses, activities and access;
8. commercial signs or other forms of outdoor advertising that are visible from the waters within a natural and scenic river;
9. water withdrawals, except for withdrawals made by an individual, adjacent property owner solely for residential purposes;
10. mooring of houseboats or floating camps on system streams except:
 - a. when the houseboat or floating camp is moored to a legally permitted piling, pier or bulkhead or moored to trees using connections that do not damage the trees and with the written permission of the owner of the trees. Written permission must be physically on the houseboat or floating camp and include the owner's contact information; and
 - b. houseboats moored on a System Stream shall have a permit or letter of certification from the Health Unit (Department of Health and Hospitals) of the parish within which the system stream is located verifying that it has an approved sewerage disposal system on board. Furthermore, all occupants of houseboats and floating camps when on a system stream must utilize an approved sewerage disposal system.

11. Timber harvest within the 100' buffer of a Scenic River that deviates from the definition of selective harvest as outlined in §103 of these regulations.

C. Application. The administrator shall provide an application to any person wishing to apply for a permit. Any person who proposes to make any permitted use of a system river, shall submit one complete original application to the administrator. Any documents larger than 8 1/2" x 14" must be submitted digitally in a department approved digital format. The application shall contain:

1. name, address and telephone numbers of the applicant;
2. names and addresses of adjoining property owners whose property also adjoins the waterway;
3. background information on the proposed use;
4. a detailed description of the proposed use;
5. full description of any portion of the project which is under development or is completed;
6. photographs and maps of the area where the uses would be made;
7. full and thorough evaluation of the use's effect on the criteria listed in Subsection F below;
8. any alternatives to the proposed action;
9. description of steps taken to minimize detrimental effects to the system river, and measures taken to ensure preservation of the system;
10. identification of all authorizing local, state, and federal agencies and all permits applied for or obtained from such agency; and
11. description of any noncompliance by applicant, adjudicated within

Louisiana, regarding the Louisiana Scenic Rivers Act, the United States Wild and Scenic River Act, and all regulations and ordinances pertaining to these acts.

D. Insufficient and Incomplete Application. Upon receipt of an application, the administrator shall determine whether the application is sufficient and complete in light of the requirements enumerated in Subsection C, above. If the application is not sufficient and complete, the administrator shall return the application to the applicant with a description of how and why the petition is insufficient or incomplete. The applicant shall be entitled to resubmit the petition after making the necessary changes or amendments.

E. Application Fees. An administrative fee of \$100 shall accompany each application. The administrative fee shall be deposited immediately upon receipt into the state treasury to be credited to the Scenic River Fund.

F. Project Evaluation. In determining whether or not a permit should be issued, the administrator's evaluation shall consider the purposes for which the system is established and shall be made with a view toward maintaining the fundamental character and unique natural values associated with the system river. Any evaluation required to be made by this Section, shall fully and thoroughly consider, but not be limited to, the following criteria:

1. wilderness qualities;
2. scenic values;
3. ecological regimes;
4. recreation;
5. aesthetic values;
6. fish and other aquatic life;
7. wildlife;

8. historical and archaeological resources;
9. geological resources;
10. botanical resources;
11. water quality;
12. cultural resources;
13. economics;
14. compliance history as required in §117.C.11;
15. any reasonable alternatives to the proposed use; and
16. a. whether reasonable steps have been taken by the applicant to minimize and/or offset any detrimental effects on natural and physical features and resources;
- b. a field evaluation of the project site by the administrator's staff may be required. If such a field evaluation is necessary, the applicant shall pay a service charge of \$135 for each day required to complete the actual, on-site field evaluation.

G. Consultation. Prior to any final decision on any application for a permit, the administrator shall prepare a written evaluation of the application and shall consult with the Louisiana State Planning Office Office of State Lands, the Department of Environmental Quality, the Department of Culture, Recreation and Tourism, the Department of Agriculture and Forestry and any other agency the administrator determines may have an interest in the permit. The consultation shall be conducted within 30 days of receipt of a sufficient and complete application. By the end of this time period, the reviewing agencies shall forward any written comments and supporting documents to the administrator. However, the administrator can grant additional time for a consultation for good cause.

H. Written Comments and Public Hearing. Prior to making the final decision on a

permit application, the administrator shall:

1. provide all interested parties and the public, the opportunity to submit written comment on the permit application, allowing a ~~45-day~~ 30-day comment period;
2. in response to a showing of substantial interest by the public for a hearing as demonstrated by written requests from no less than 25 persons or from a group representing not less than 25 members, or upon request by the applicant, or at the administrator's own discretion, hold a public hearing. The hearing will be held whenever such a hearing might clarify one or more issues concerning the application, and to receive comments and recommendations from all interested parties and the public. If a hearing is held it shall be in the vicinity of the river. The administrator shall give its first notice at least 30 days prior to the hearing;
3. notices referred to in this Section will be published once in the official journal of each parish in which the river is located ~~in three separate issues~~ and in the official state journal; however, the comment period shall begin with publication of the notice in the official state journal. The administrator shall notify each parish governing authority of the hearing by letter to its chief executive officer. The administrator shall also give special notice of the public hearing to all readily identifiable landowners with property adjacent to the nominated stream and to other interested parties who have requested such notifications.

I. Time Period for Review of the Application. The administrator shall make a decision whether to grant or deny the permit within 30 days after the adjournment of the hearing or the end of the written comment period, whichever is latest.

J. Waiver of Evaluation Time Period. Upon the specific authorization of the administrator, or the state legislature, the evaluation required by §117.F-I, and/or the procedural delays provided for in Subsections L and M may be waived; provided, however, that the

administrator may only authorize a waiver in emergency circumstances clearly appearing from the face of the applicant's application and only after concurrence in the waiver is given by personnel of the Department of Wildlife and Fisheries, the Department of Culture, Recreation and Tourism, ~~State Planning Office~~ the Office of State Lands, the Department of Agriculture and Forestry, and the Department of Environmental Quality.

K. Reports of Permitted Uses. To the extent that it is feasible, it shall be the policy of the administrator to inform users and potential users of system rivers as to what types of uses will be permitted. In carrying out this policy, the administrator shall, from time to time, publish reports describing what types of uses have been permitted and what types of uses have not been permitted after the evaluations required by §117 have been undertaken.

L. Denial of Permits. The administrator shall deny a permit for use of a system river if, after a full and thorough evaluation, the administrator finds that the proposed or alternative use would be unreasonable in light of the objective of maintaining the fundamental character and unique natural values associated with the system river.

M. Permit Conditions

1. In issuing any permit, the administrator may:

a. require conditions in the use and may require that appropriate steps be taken to minimize and/or offset the detrimental effects on the natural and physical features and resources enumerated by Subsection F, above, as a condition to the granting of the permit; and

b. require assurance, including security, during the construction phase of the project, to assure compliance with permit requirements.

2. In setting the required assurance and security, the administrator shall

consider any noncompliance by applicant, adjudicated within Louisiana, regarding the Louisiana Scenic Rivers Act, the United States Wild and Scenic Rivers Act, and all regulations and ordinances pertaining to these acts.

N. Final Decision. The final decision by the administrator on any application for a permit shall:

1. be in the form of a written report;
2. be part of the record of the decision;
3. include an evaluation of the impacts on the criteria provided for in

Subsection F, above; and

4. give full and meaningful consideration and appropriate weight to the comments from other reviewing agencies.

O. Copies. The administrator shall provide copies of the final decision to:

1. ~~Louisiana State Planning Office~~ Office of State Lands;
2. Department of Environmental Quality;
3. Department of Culture, Recreation and Tourism;
4. Department of Agriculture and Forestry; and
5. other interested parties who provide a written request.

P. Modification and Revocation. The administrator may modify or revoke a permit, for good cause, after notice and an adjudicatory hearing, unless waived by permittee. Good cause includes, but is not limited to:

1. any adjudicated violation of the permit conditions, the act or these regulations;
2. new and material evidence regarding the evaluation criteria listed in

§117.F; and

3. intentional misrepresentation of a material fact on the permit application.

Q. Failure to Begin Activity—Extensions. The permit shall expire if the activity has not begun within 18 months two years of permit issuance, except that the administrator may grant a maximum of two extensions of six months one year each upon a finding that there has been no significant change in circumstances.

R. Appeals of Final Decision. Any person who is denied a permit by the department may institute legal proceedings against the department in the Nineteenth Judicial District Court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1844, 56:1849, 56:1852 and 56:1854.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 2:456 (December 1976), amended by the Department of Wildlife and Fisheries, Office of the Secretary, LR 17:682 (July 1991), amended by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 40:547 (March 2014). LR .

§118. Activities that Qualify for Expedited Permitting

A. General Permits. Activities that LDWF has determined to have no significant deleterious impact on the System may qualify for a General Permit, which, if granted, could afford a more expeditious review process and would not require a public comment period. Such activities would require the evaluation set forth in §117.C-G above, and are limited to the following categories:

1. General maintenance of existing structures, to include in-kind replacements. Specifically when the original project was unpermitted. Bridges are not included.

2. New residential construction of non-inhabitable structures over water including, but not limited to, pilings, boat sheds, docks, walkways, and piers. Such structures shall be designed in compliance with all applicable regulations and law. Under this category, the structure size shall be no greater than 800 square feet.

3. New bankline stabilization projects. Under this category, bankline stabilization shall be limited to 200 linear feet with minimal backfill. Concrete mats and other similar structures will not qualify.

4. New boring or horizontal directional drilling (HDD) installation of sewer lines, water lines, and transmission cables. Overhead transmission lines and right-of-ways will not qualify.

5. Rebuilding or renovations of single residence or camp. Shall not include commercial operations or activities. Must have sanitary treatment plan and Department of Health approval prior to issuance of this general permit.

6. Maintenance dredging of existing boat slips and boat ramps.

7. Habitat improvements to riparian ecological functions within 100' buffer when exceeding the selective harvest definition as outlined in §103.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1843

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR .

Family Impact Statement

In accordance with Act 1183 of 1999 Regular Session of the Louisiana Legislature, the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission hereby issues its

Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Poverty Impact Statement

This proposed Rule will have no impact on poverty as described in R.S. 49:973.

Provider Impact Statement

This proposed Rule has no known impact on providers as described in HCR 170 of 2014.

Small Business Analysis

This proposed Rule has no known impact on small businesses as described in R.S. 49:965.2 through R.S. 49:965.8.

Public Comments

Interested persons may submit written comments relative to the proposed Rule until October 1, 2025, to Amelia Wolfe, Office of Wildlife, Department of Wildlife and Fisheries, P. O. Box 98000, Baton Rouge, LA 70898-9000 or via e-mail to awolfe@wlf.la.gov.

Kevin Sagrera

Chairman