

Upper Chattooga River Analysis
Questions and Answers
June 15 2007

1. What decision is the Forest Service trying to make at this time for the upper Chattooga River?

In response to direction from the Washington Office, local Forest officials will specifically review whether to maintain the current Forest Plan management direction of the upper Chattooga for all existing recreational uses including potential private boating. The Forest Service will examine current desired conditions, goals, objectives, standards, and monitoring related to the Upper Chattooga River in the existing Forest Plans for the Sumter NF in SC, Chattahoochee NF in GA and Nantahala/Pisgah NF in NC and make changes where appropriate. Where deemed necessary to ensure compliance with goals, objectives and standards, some specific “project level” management actions may also be included. Although the scope of this decision is limited to the upper Chattooga, management of national forest lands in the entire corridor will be considered when addressing use and impact patterns and the acceptability of management actions.

If changes are made in current management direction, a Forest Plan amendment will need to be made to each of the three Forest Plans listed above. The responsible official will be the Forest Supervisor for each Forest Plan.

2. What is your expected timeline for NEPA analysis and making a decision on management of the Upper Chattooga?

The Forest Service has set a target date of December 2007 to make a decision. This timeline is based on making a decision as soon as possible, while allowing for an open and collaborative process.

3. What did you base your conclusion on that the existing data collection was adequate to begin the NEPA process and development and evaluation of specific alternatives for management of the upper Chattooga?

Through a series of three public meetings in 2005, the Forest Service worked with the public to identify the priority information needs and data collection methods that would enable the agency to evaluate visitor use and potential environmental impacts on the upper Chattooga. This collaborative work guided the design and implementation of a multi-pronged data collection effort and analysis focused on providing the Forest Service with a comprehensive picture of how existing and potential recreation opportunities may affect important social or biophysical conditions on the upper Chattooga. The most prominent features of the data collection results to date include:

- literature reviews capturing resource and social impacts, potential standards, and management actions from the Chattooga or similar rivers;

- current inventories of existing recreational use levels, biophysical impacts, and upper river hydrology; and
- boating and angling opportunities at different flows derived from expert panel reconnaissance trips.

These and other data results describe a range of important social and resource indicators and are sufficient for the Forest Service to begin work with the public to establish meaningful standards. Additionally, the data provides discussion of existing and potential uses that is sufficient to guide the agency in working with the public to develop and evaluate specific alternatives about where and what management actions might be required to fulfill these standards.

Additional information sources such as trial public boating, focus groups, and surveys, have been determined to be unnecessary to guide further analysis. Collecting this additional information would involve significant costs and further delay the decision until well into 2008.

4. How will the Forest Service be handling the question of private lands within the Upper Chattooga Corridor?

Portions of the Chattooga Wild and Scenic River flow through private lands in North Carolina. Congress included private lands within the designated boundaries of the Chattooga Wild and Scenic River corridor. The Wild and Scenic River Act, however, does not take away any private property rights from private landowners or sanction trespass on private land. The existence and scope of public use rights on portions of the Chattooga River that flow through private property have not been identified or defined by the appropriate governmental agencies or by the courts.

Therefore, an issue exists regarding whether the public has a right to float or otherwise recreate on portions of the river that flow through private land in North Carolina. There currently exist different opinions held by various interests as to whether stretches of the Chattooga River flowing through private lands should be considered legally navigable for public use under state or federal law.

The United States Army Corps of Engineers (USACE) is the federal agency authorized to make determinations of navigability for purposes of regulation under the Rivers and Harbors Act of 1899. The Asheville field office of the COE has communicated to constituents that “the Chattooga River in Jackson County is not considered navigable pursuant to Section 10 of the Rivers and Harbors Act of 1899 at this time.” However, the USACE has also recently informally communicated to the Forest Service that the Division Engineer of the USACE has not made a final navigability determination for the Chattooga River in Jackson County, North Carolina, pursuant to Section 10 of the Rivers and Harbors Act of 1899 and 33 CFR Part 329.14. In the absence of a judicial ruling, this is the only way a water body can be designated navigable pursuant to the Rivers and Harbors Act Section 10.

It is unclear whether and, if so, when, the USACE intends to complete the regulatory steps necessary to make an official determination of navigability for purposes of the

Rivers and Harbors Act. It is important to note, however, that the courts have the ultimate authority to make conclusive determinations regarding navigability.

Similarly, the Forest Service is not aware of any binding North Carolina legal precedents specific to whether the Chattooga River in North Carolina is considered to be navigable for public use and thereby subject to the public trust doctrine and public trust rights pursuant to state law.

As the Forest Service begins to develop and analyze specific alternatives regarding floating and other recreational pursuits in the Upper Chattooga River, the agency will fully consider and evaluate this issue. Where uncertainty exists about the legal status of the river and the potential effects of each analyzed alternative, the Forest Service will document that level of uncertainty as part of its environmental analysis.

5. **The Natural Resources Leadership Institute (NRLI) conducted interviews to determine what opportunities exist for collaboration. What was the result of this “situation assessment?”**

Key findings include the fact that nearly all of the respondents share one important value: that protection of the Chattooga River now and in the future is of great importance. Additionally, many of the respondents are willing to try collaboration but understand that the Forest Service will ultimately make the decision with respect to recreational use on the upper Chattooga. In order for collaboration to be successful, the assessment found that significant misperceptions and assumptions about other users must be overcome. Even while some parties are willing to collaborate on the issue of boater access, it is not clear whether an alternative exists that can satisfy the interest of all parties.

6. **How will the public be involved in this process?**

The Forest Service used the results of the NRLI situation assessment to design a collaborative process by which the agency commits to keeping its partners and the public informed of its planning activities, to consult with them at major milestones throughout the analysis, and to involve them in such a way that ensures their perspective is reflected and addressed in the decision. This process is outlined in the “Citizens Guide to Public Involvement on the Chattooga River” and includes a range of activities from a more formalized public hearing to collaborative workshops to a written notice and comment opportunity.

7. **What is the best place to go for detailed information about the Upper Chattooga analysis?**

Information about the Upper Chattooga River Capacity Use Analysis is available at the Francis Marion and Sumter National Forest website: <http://www.fs.fed.us/r8/fms/>. Detailed reports documenting the analysis are posted on this. More details about the upcoming public meetings will also be posted there as they become available.