



United States
Department of
Agriculture

Forest
Service

Southern Regional Office

1720 Peachtree Rd., NW
Atlanta, GA 30309

File Code: 1570
12-08-03-0019
12-08-11-0020
12-08-12-0021
Date: June 28, 2012

CERTIFIED MAIL R.R.R.

Whiteside Cove Association
ATTN: Mr. Mitchell Betty
P.O. Box 2294
Cashiers, NC 28717

Re: Appeal of Forest Supervisor George M. Bain's, Acting Forest Supervisor Diane Rubiaco's and Forest Supervisor Paul L. Bradley's January 31, 2012, Decision for Amendments 1, 22 and 1, Respectively, for Management of Boating Activities in the Upper Chattooga River Land and Resource Management Plan

Dear Mr. Betty:

Pursuant to the authority granted to me by Title 36 Code of Federal Regulations (CFR) Part 219 Interim Appeal Regulations, this is my Decision on your Notice of Appeal (NOA) for the subject Decision. Your appeal is to the Decision to amend the Land and Resource Management Plan (LRMP) to regulate boating in the Upper Chattooga River Corridor. I have consolidated your Appeals 12-08-03-0019 (Chattahoochee-Oconee Amendment 1); 12-08-11-0020 (Nantahala Plan Amendment 22); and 12-08-12-0021 (Sumter Plan Amendment 1) into a single response.

BACKGROUND

On January 31, 2012, Chattahoochee-Oconee National Forests (NFs) Forest Supervisor George M. Bain, NFs in North Carolina Acting Forest Supervisor Diane Rubiaco, and Francis Marion-Sumter NFs Forest Supervisor Paul L. Bradley, signed the respective Decisions for this Project, amending the existing LRMP. On March 17, 2012, I received your electronically-filed NOA, which was accepted by acknowledgement on March 23, 2012.

RELIEF REQUESTED

You requested that the Decisions be amended.



DECISION

I based my Decision upon a thorough review of your NOA, the Decision Notice (DN), Finding of No Significant Impact (FONSI), Environmental Assessment (EA) and other project record documents for these Part 219 LRMP Amendments. In addition, I also considered intervenor comments filed on your appeals by Kevin Colburn representing American Whitewater, American Canoe Association, Atlanta, Whitewater Club, Georgia Canoeing Association, Western Carolina Paddlers, Bruce Hare, Kenneth Strickland and Joseph Stubbs.

I find that the Forest Supervisors complied with the relevant legal authorities, such as the National Environmental Policy Act (NEPA), National Forest Management Act (NFMA) and Wild and Scenic River Act (WSRA). Therefore, I am affirming the Forest Supervisors' January 31, 2012, Decision. I have enclosed a detailed discussion of the issues raised in your appeals and the rationale which supports my findings for each issue.

This constitutes the final administrative determination of the Department of Agriculture unless the Chief, on his own volition, elects discretionary review of the Decision (36 CFR 219).

Sincerely,

/s/ Ken S. Arney

KEN S. ARNEY
Reviewing Officer
Deputy Regional Forester

Enclosure

DISCUSSION OF ISSUES

Issue 1 Whether the analysis complies with the Wild and Scenic Rivers Act (WSRA).

The appellant contends:

A. I. Failure to consider and study the entire wild and scenic portion of the river violates the Wild and Scenic River Act. (Appeal, p. 3)

B. Contrary to this evidence and the Forest Service's own statements in federal court, the agency has only assessed the recreational value on the upper segment of the Chattooga, without due consideration of the evidence collected showing how boating below highway 28 has displaced many non-paddling visitors. If *recreation* throughout the *Chattooga WSR corridor* is the value (ORV), than segmenting the designated Chattooga for assessment of this value results in an incomplete and deficient assessment. Such a deficient analysis could not possibly determine how the proposed policy would affect the recreational value as a whole.

Finally, the visitor capacity becomes skewed when only the zone previously established to provide for diversity throughout the resource is viewed in isolation of the whole resource used to establish a balance of uses. Although site specific 'tiering' can be appropriate, tiering requires consideration of the segments relationship with the entire forest plan; it is not appropriate for the agency to segregate analysis from previous management decisions. (Appeal, p. 5)

The 2005 Decision for Appeal states the following:

Section 10(a) of the WSRA requires the river-administering agency to protect and enhance the values which caused a river to be added to the National System. These values are expressed in Section 1 (b) as the river's free-flowing condition, water quality, and outstanding remarkable values (ORVs). The Interagency Guidelines (1982) interpret the direction in Section 10(a) as a "nondegradation and enhancement policy for all designated rivers, regardless of classification." (p. 4)

Specific to recreation as an ORV, the Interagency Guidelines direct public use "be regulated and distributed where necessary to protect and enhance...the resource values of the river area." Agency policy (FSM 2354.41) identifies factors to consider in developing direction for recreation visitor use in a wild and scenic river (WSR) corridor including the capability of the physical environment, desires of present and potential users, diversity of recreation opportunities within the geographic area, and budgetary, personnel and technical considerations. If it becomes necessary to limit use, "ensure that all potential users have a fair and equitable chance to obtain access to the river." (p. 5)

The Wilderness Act directs that areas designated as wilderness "be administered for the use and enjoyment of the American people in such manner as will leave them

unimpaired for future use and enjoyment as wilderness"(Section 2(a) of the Wilderness Act). Section 2(c) of the Wilderness Act defines wilderness, in part, as an area with "outstanding opportunities for solitude or a primitive or unconfined type of recreation." Additionally, Section 4(b) states that: "Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreation, scenic, scientific, educational, conservation, and historical use." Regulations developed for administration of National Forest wilderness establish that "wilderness will be made available for human use to the optimum extent consistent with the maintenance of primitive conditions" (36 CFR 293.2(b)). (p. 5)

After careful review of the record, particularly Appendix H, I am reversing the Regional Forester's decision to continue to exclude boating on the Chattooga WSR above Highway 28. I find the Regional Forester does not provide an adequate basis for continuing the ban on boating above Highway 28. Because the record provided to me does not contain the evidence to continue the boating ban, his decision is not consistent with the direction in Section 10(a) of the WSRA or Sections 2(a) and 4(b) of the Wilderness Act or agency regulations implementing these Acts. (p. 6)

I am directing the Regional Forester to conduct the appropriate visitor use capacity analysis, including non-commercial boat use; and to adjust or amend, as appropriate, the RLRMP to reflect a new decision based on the findings. (p. 6)

The EA states the following:

Specific need for action statements and relevant laws are summarized below:

- A. Action is needed to respond to an appeal decision on the Sumter Land and Resource Management Plan (2004). (p.1)
- B. Action is needed to provide consistent management of the upper segment of the Chattooga WSR on all three national forests. (p.3)
- C. Action is needed to preserve the upper segment of the Chattooga WSR's free-flowing condition, protect its water quality and protect and enhance its ORVs, as well as preserve the wilderness character of the Ellicott Rock Wilderness. (p. 3)
 - 1. Wild and Scenic Rivers Act (p. 3)
 - 2. Wilderness Act (p. 4)
 - 3. Potential conflict between WSRA and Wilderness Act (p. 5)

1.4 Decisions to be Made

Decisions to be made are specific to the upper segment of the Chattooga WSR. Management of the river below Highway 28 was not challenged in the 2004 Sumter RLRMP and is not subject to further review. Management activities are considered within the context of the entire Chattooga WSR and are analyzed in the cumulative effects sections in Chapter 3. (p.6)

EA, Chapter 3 (pp. 51-52) further states:

A. Spatial Bound for All Effects

The spatial bound for direct and indirect effects is one-quarter mile on either side of the upper segment of the Chattooga WSR and the spatial bound for cumulative effects is the Chattooga River watershed measured at two scales; the portion above Hwy. 28 and the drainage as measured above Tugaloo Lake. The temporal bound of analysis for cumulative effects analyzes projects and land usage within the watershed that have taken place within the last five years and the foreseeable projects in the next five years (2007-2016).

The upper segment of the Chattooga WSR Corridor is divided into four reaches for analysis and reporting purposes. References to these reaches are made throughout this EA. Table 3.1-1 identifies the segments.

Table 3.1-1 Chattooga River Reaches (Source: Whittaker and Shelby 2007)

Reach Name	Location
Chattooga Cliffs	Grimshawes Bridge to Bullpen Road Bridge
Ellicott Rock	Bullpen Road Bridge to Burrells Ford Bridge
Rock Gorge	Burrells Ford Bridge to Lick Log Creek
Nicholson Fields	Lick Log Creek to Hwy. 28 bridge

The DN/FONSI states the following:

This decision (p. 1):

1. Responds to an appeal decision on the 2004 Sumter Revised LRMP;
2. Provides consistent management of the upper segment of the Chattooga WSR on all three national forests; and
3. Preserves the upper segment of the Chattooga WSR's free-flowing condition, protects its water quality and protects its outstandingly remarkable values (as required by the Wild and Scenic Rivers Act [WSRA]), as well as preserves the wilderness character of the Ellicott Rock Wilderness (as required by the Wilderness Act).

3.0 DECISION (p. 21)

I have decided to implement Alternative 13A. The scope of my decision is limited to the upper segment of the Chattooga WSR. However, I made the decision within the context of the entire river.

The 2004 Revised Forest and Land Management Plan for the Sumter National Forest (pp. 2-24 to 2-26), the Land and Resource Management Plan for the Chattahoochee-Oconee National Forest (pp. 3-19 to 3-43), and the Land and Resource Management Plan Amendment 5 for the

Nantahala and Pisgah National Forests in North Carolina (pp. III-167 to III-172) address visitor impact management issues in the entire Chattooga WSR corridor, refining previously developed boating capacities for the lower segments of the river and retaining a 1976 ban on boating in the upper segments; Management Areas 2.A and Management Area 2.B on the Francis Marion and Sumter NFs and Chattahoochee-Oconee NFs and Management Area 15 on the Nantahala and Pisgah NFs. The ban on boating in the upper segment was the subject of an appeal of the Sumter's Revised FLRMP. The 2005 Decision for Appeal (p. 6) of the Sumter National FLRMP Revision issued by the Washington Office in 2005 reversed the Regional Forester's decision to continue to exclude boating on the Chattooga WSR above Highway 28. In this Appeal Decision, the Reviewing Officer found (p. 6) the Regional Forester did not provide an adequate basis for continuing the ban on boating above Highway 28, and directed the Regional Forester to conduct an appropriate visitor use capacity analysis to reflect a new decision based on the findings.

The EA states (p. 2) that US Forest Service agreed to reassess the ban on boating in the upper segments as part of a broader examination of visitor capacity issues in those upper segments. The purpose and need (EA, pp. 1-3) for the proposed action was to respond to the 2005 Appeal Decision on the Sumter's FLRMP, to provide consistent management of the upper segment of the Chattooga WSR on all three National Forests, and to preserve the upper segment's free-flowing condition, protect its water quality and protect and enhance its ORVs, and preserve the wilderness character of Ellicott Rock Wilderness.

Finding

I find the analysis complies with the Wild and Scenic Rivers Act and that the analysis complies with the direction in the 2005 Appeal Decision for the Sumter RFLRMP to conduct a visitor capacity analysis on the river segment above Highway 28.

Issue 2 Whether the analysis complies with the National Forest Management Act (NFMA).

The appellant contends the following:

II. Failure to consider and study the entire wild and scenic portion of the river violates the National Forest Management Act, 16 U.S.C. §1600 *et seq.* (Appeal, p. 6)

The EA did not provide an inventory of the rivers available to boaters during periods when the upper Chattooga might be floatable. Nor did the assessment inventory the list of streams where angling and hiking without boating disturbance might be available at time of higher flows...NFMA requires the agency to "evaluate the significant physical, biological, economic and social effects of each management alternative that is considered in detail."...(Appeal, p. 6)

...The USDA published guidelines requires Forest Plans to consider the forest-wide effects and therefore not partition the forest during planning. The guidelines indicate that "The primary decisions made in a forest plan include: (1) Establishment of the forest-wide multiple-use goals and objectives (36 CFR

219.11(b)).” [from Federal Register: August 1, 1996 (Volume 61, Number 149) Page 40183-10191]. (Appeal, p. 6)

By ignoring the 30+ miles of designated Chattooga WSR already open to kayaking, and the effects boating has already had on the many other visitor types downstream, the agency has failed to consider factors relevant to their decision...(Appeal, p. 6)

The 2005 Decision for Appeal states the following:

Section 10(a) of the WSRA requires the river-administering agency to protect and enhance the values which caused a river to be added to the National System. These values are expressed in Section 1 (b) as the river's free-flowing condition, water quality, and outstanding remarkable values (ORVs). The Interagency Guidelines (1982) interpret the direction in Section 10(a) as a "nondegradation and enhancement policy for all designated rivers, regardless of classification." (p. 4)

Specific to recreation as an ORV, the Interagency Guidelines direct public use "be regulated and distributed where necessary to protect and enhance...the resource values of the river area." Agency policy (FSM 2354.41) identifies factors to consider in developing direction for recreation visitor use in a wild and scenic river (WSR) corridor including the capability of the physical environment, desires of present and potential users, diversity of recreation opportunities within the geographic area, and budgetary, personnel and technical considerations. If it becomes necessary to limit use, "ensure that all potential users have a fair and equitable chance to obtain access to the river." (p.5)

The Wilderness Act directs that areas designated as wilderness "be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness"(Section 2(a) of the Wilderness Act). Section 2(c) of the Wilderness Act defines wilderness, in part, as an area with "outstanding opportunities for solitude or a primitive or unconfined type of recreation." Additionally, Section 4(b) states that: "Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreation, scenic, scientific, educational, conservation, and historical use." Regulations developed for administration of National Forest wilderness establish that "wilderness will be made available for human use to the optimum extent consistent with the maintenance of primitive conditions" (36 CFR 293.2(b)). (p.5)

After careful review of the record, particularly Appendix H, I am reversing the Regional Forester's decision to continue to exclude boating on the Chattooga WSR above Highway 28. I find the Regional Forester does not provide an adequate basis for continuing the ban on boating above Highway 28. Because the record provided to me does not contain the evidence to continue the boating ban, his decision is not consistent with the direction in Section 10(a) of the WSRA or Sections 2(a) and 4(b) of the Wilderness Act or agency regulations implementing these Acts. (p. 6)

I am directing the Regional Forester to conduct the appropriate visitor use capacity analysis, including non-commercial boat use; and to adjust or amend, as appropriate, the RLRMP to reflect a new decision based on the findings. (p. 6)

The EA states the following:

Specific need for action statements and relevant laws are summarized below:

- A. Action is needed to respond to an appeal decision on the Sumter Land and Resource Management Plan (2004). (p. 1)
- B. Action is needed to provide consistent management of the upper segment of the Chattooga WSR on all three national forests. (p. 3)
- C. Action is needed to preserve the upper segment of the Chattooga WSR's free-flowing condition, protect its water quality and protect and enhance its ORVs, as well as preserve the wilderness character of the Ellicott Rock Wilderness. (p. 3)
 1. Wild and Scenic Rivers Act (p. 3)
 2. Wilderness Act (p. 4)
 3. Potential conflict between WSRA and Wilderness Act (p. 5)

1.4 Decisions to be Made

Decisions to be made are specific to the upper segment of the Chattooga WSR. Management of the river below Highway 28 was not challenged in the 2004 Sumter RLRMP and is not subject to further review. Management activities are considered within the context of the entire Chattooga WSR and are analyzed in the cumulative effects sections in Chapter 3. (p. 6)

The DN/FONSI (Sumter, p. 1) states that the Purpose and Need for the Decision is the following:

1. Responds to an appeal decision on the 2004 Sumter Revised LRMP;
2. Provides consistent management of the upper segment of the Chattooga WSR on all three national forest; and
3. Preserves the upper segment of the Chattooga WSR's free-flowing condition, protects its water quality and protects its outstandingly remarkable values (as required by the Wild and Scenic Rivers Act [WSRA]), as well as preserves the wilderness character of the Ellicott Rock Wilderness (as required by the Wilderness Act)."

DN/FOSNI (p. 3) states under Section 3.0 Decision that "I have decided to implement Alternative 13A. The scope of my decision is limited to the upper segment of the Chattooga WSR. However, I made the decision within the context of the entire river..."

Project Record item 183 is a document signed by Jerome Thomas dated September 26, 2007 regarding direction on the range of alternatives for Management of the Upper Chattooga River. The document specifically states:

The analysis teams are directed to follow the recommendations provided in the enclosed document, "Recommendations Regarding the Range of Alternatives for Management of the Upper Chattooga River."

"In light of the factors discussed above, the Responsible Officials for the plan amendments addressing management of the upper Chattooga River are advised to defer any management decisions that would alter the current status of boating opportunity from Grimshawes Bridge to the southern end of the Rust property. Any preliminary alternatives which contain this river segment should be eliminated from detailed

consideration in the environmental assessment currently underway. Any new alternatives developed during the NEPA process that include management for general public use purposes should not include this segment of the river.”

The responsible Forest Supervisors support this direction, which goes into effect immediately, in considering alternatives included in the August scoping letter, any new alternatives, and in communicating our analysis process to stakeholders.

Finding

I find the analysis complies with the National Forest Management Act.

Issue 3 Whether the analysis complies with the Multiple-Use Sustained-Yield Act .

The appellant contends:

III. Failure to consider and study the entire wild and scenic portion of the river violates the Multiple-Use Sustained-Yield Act (“MUSYA”) (Appeal, p. 6)

...The FS violates MUSYA by failing to consider the relative value of having one area free from boating in light of the majority of the river being overrun by boating use. (Appeal, p. 7)

Further, for Wild and Scenic Rivers, boating has a statutorily lower value than does solitude, wildlife habitat and the resource features 28 U.S.C. § 1281(a). Since conversation values area already congressionally assigned a superior “value” under the Wild and Scenic River statutes, no research is necessary to determine that floating is considered of less importance, than the protection of conservation values. Any diminishment of conservation value (not just those considered significantly by the agency) would require the agency to not expand boating. Further ‘multiple-use’ is defined as the combination of all possible uses that ‘best meet the needs of the American people’...(Appeal, p, 7)

The 2005 Decision for Appeal states the following:

Section 10(a) of the WSRA requires the river-administering agency to protect and enhance the values which caused a river to be added to the National System. These values are expressed in Section 1 (b) as the river's free-flowing condition, water quality, and outstanding remarkable values (ORVs). The Interagency Guidelines (1982) interpret the direction in Section 10(a) as a "nondegradation and enhancement policy for all designated rivers, regardless of classification." (p. 4)

Specific to recreation as an ORV, the Interagency Guidelines direct public use "be regulated and distributed where necessary to protect and enhance...the resource values of the river area." Agency policy (FSM 2354.41) identifies factors to consider in developing direction for recreation visitor use in a wild and scenic river (WSR) corridor including the capability of the physical environment, desires of present and potential users, diversity of recreation opportunities within the geographic area, and budgetary, personnel and technical considerations. If it becomes necessary to limit

use, "ensure that all potential users have a fair and equitable chance to obtain access to the river." (p. 5)

The Wilderness Act directs that areas designated as wilderness "be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness"(Section 2(a) of the Wilderness Act). Section 2(c) of the Wilderness Act defines wilderness, in part, as an area with "outstanding opportunities for solitude or a primitive or unconfined type of recreation." Additionally, Section 4(b) states that: "Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreation, scenic, scientific, educational, conservation, and historical use." Regulations developed for administration of National Forest wilderness establish that "wilderness will be made available for human use to the optimum extent consistent with the maintenance of primitive conditions" (36 CFR 293.2(b)). (p. 5)

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The responsible Forest Supervisors support this direction, which goes into effect immediately, in considering alternatives included in the August scoping letter, any new alternatives, and in communicating our analysis process to stakeholders.

Finding

I find the analysis complies with the Multiple-Use Sustained Yield Act.

Issue 4 Whether the analysis complies with the Administrative Procedures Act (APA).

The appellant contends:

IV. Failure to consider and study the entire wild and scenic portion of the river violates the Administrative Procedures Act. (Appeal, p. 7)

By not taking a "hard look" at environmental and other consequences of a proposed recreation plan and not responding to repeated requests to look at obviously relevant evidence concerning the whole WSR portion of the river violates the APA. (Appeal, p. 7)

Section 10(a) of the WSRA requires the river-administering agency to protect and enhance the values which caused a river to be added to the National System. These values are expressed in Section 1 (b) as the river's free-flowing condition, water quality, and outstanding remarkable values (ORVs). The Interagency Guidelines (1982) interpret the direction in Section 10(a) as a "nondegradation and enhancement policy for all designated rivers, regardless of classification." (p.4)

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The responsible Forest Supervisors support this direction, which goes into effect immediately, in considering alternatives included in the August scoping letter, any new alternatives, and in communicating our analysis process to stakeholders.

Finding

I find the analysis complies with the Administrative Procedures Act.

Issue 5 Whether the analysis complies with the Interagency Guidelines and Forest Service Manual.

The appellant contends:

V. Failure to consider and study the entire wild and scenic portion of the river violates Interagency Guidelines and the Forest Service Manual (Appeal, p. 8)

The Decision Notice (p. 2) states the scope of the decision is limited to the upper segment of the Chattooga WSR; however, the Deciding Official made the decision within the context of the entire river. The Sumter Revised FLRMP (pp. 3-8 to 3-17), Chattahoochee-Oconee FLRMP (pp. 3-19 to 3-43), and the Nantahala FLRMP Amendment 5 (pp. III-167 to III-172) contain a comprehensive river management plan, standards, and desired future conditions for the entire WSR corridor.

FSM 2354.03 (WO Amendment 2300-2009-02, page 38 of 77) requires the agency to plan and manage river recreation in a context that considers the resource attributes, use patterns, and management practices of nearby rivers, and to consider both designated and non-designated rivers managed by the Forest Service and/or other Federal, State and local management entities. The agency reviewed (EA, p. 456) capacity issues on seven W&S Rivers with similarities to issues on the Upper Segment of the Chattooga. In addition, the FEIS for the Sumter RFLRMP (FEIS, p. 3-302) completed a comprehensive inventory of rivers on the Sumter NF; seventeen streams or rivers were reviewed for potential eligibility. The Sumter Revised FLRMP (Goal 29, p. 2-26) contains goals for managing those rivers found eligible. The Chattahoochee-Oconee NF FLRMP contains goals (Goal 46, p. 2-43) and standards (Management Area 2B, pp. 3-34 to 3-43) for streams designated, recommended, or eligible for the NW&S River system. The Nantahala FLRMP Amendment 5 (pp. III-167-172) contains standards for the Chattooga and Horsepasture W&S Rivers.

The Interagency Guidelines (Revised Final Guidelines for Eligibility, Classification and Management of River Areas, 47 FR 173, p. 39458) for Wild and Scenic River management states river management plans will state “the kinds and amounts of public use which the river area can sustain without impact to the values for which it was designated.” By setting capacity limits for the Upper Chattooga River, the agency has complied with these Guidelines.

Finding

I find the agency has complied with the Interagency Guidelines and FSM 2354.04 by completing a comprehensive review of all rivers on the Sumter NF, considering similar issues on other designated and non-designated rivers, and by setting capacity limits to protect the values for which the river was designated.

Issue 6 Whether the analysis complies with NEPA and Forest Service Environmental Policy and Procedures Handbook.

The appellant contends:

VI. Failure to consider and study the entire wild and scenic portion of the river and failure to document the impact of the new policy on private property violates NEPA and the Forest Service Environmental Policy and Procedures Handbook

40 C.F.R 1508.25 defines the scope of an Environmental Assessment which requires the agency to *consider the indirect and cumulative impacts* to the proposed actions as well as any *connected action*, or *cumulative action* caused by an agency action. The connected action of trail redesign and campsite closures, such as the proposed put-in at Green Creek where no viable trail exists, would impact the resource as well as recreational opportunities; these require consideration under NEPA. Although the agency has reasonable authority to establish the assessment's spatial scope, a NEPA review requires consideration of "*the affected region, the affected interests, and the locality*" [40 CFR 1508.27], before establishing whether impacts from an agency action "might be significant." Ignoring the affects the proposed recreation policy will have on nearby stream segments is illegal under the NEPA standard. The thousands of miles of creeks available to boaters in the geographic area must be considered, when analyzing the supply of recreational opportunities, or the EA is uninformative and conclusionary. (Appeal, pp. 8-9)

... the FS violates NEPA by failing to document the impact of its policy on private property in the WSR corridor... (Appeal, p. 9)

This access point was selected to incite paddlers to trespass and the agency is avoiding assisting landowners as they are required to do by law... (Appeal, p. 9)

"A Compendium of Questions & Answers Relating to Wild & Scenic Rivers" (project record 413) states (p. 32) regarding "Activities on Private Lands Within the WSR Corridor" the following:

Q. What are the effects of WSR designation on private landowners within the river corridor?

A. Under the Act, designation neither gives nor implies government control of private lands within the river corridor. Although many rivers include private lands within the boundaries of the designated river area, management restrictions would apply only to federal lands. The federal government has no power to regulate or zone private lands under the Act; however, administering agencies may highlight the need for amendment to local zoning (where state and local zoning occurs). People living with a river corridor may use their property as they had before designation.

Within the DN/FONSI (p. 8), Section 5.2 Alternatives Considered but not Evaluated in Detail states the following:

Boating through private land on the upper segment of the Chattooga WSR

The upper portion of the Chattooga Cliffs Reach has private land on both the upper segment of the Chattooga WSR. The landowners claim that public use would constitute trespass. Until decisions about navigability are made for the sections of the river with private land along them, or public access rights on this reach are determined, the U.S. Forest Service considers this section of the upper segment of the Chattooga WSR beyond the scope of this decision.

The EA documents the following (citations are at the end of each reference):

A. Trespass on private land

Issue: Concern that allowing boaters on the upper segment of the Chattooga WSR (from Green Creek downstream) may increase chances of boater trespass on private lands, with particular concern about boaters floating through adjacent private land between Grimshawes Bridge and Green Creek.

Response: This issue is outside the scope of this EA. The U.S. Forest Service does not encourage trespass on private lands; boating use under consideration in alternatives 8, 11, 12, 13, 13A and 14 focus on use downstream of Green Creek (please see “Alternatives Considered But Not Evaluated in Detail” for further clarification about why this EA does not analyze potential visitor use issues upstream of Green Creek. (Chapter 1, Section 1.7)

2.4 Alternatives Considered But Not Evaluated In Detail

A. Boating through private land on the upper segment of the Chattooga WSR

All boating alternatives (8, 11, 12, 13, 13A and 14) allow boating use downstream from Green Creek in the Chattooga Cliffs Reach. Any of these alternatives could have allowed boating to start about 1.8 miles further upstream at Grimshawes/Sliding Rock Bridge. However, this reach has private land on both sides of the river and the landowners claim that public use would constitute trespass.

Navigability and public access rights on this reach have not been formally analyzed by any federal or state agency or authority, nor has its navigability been adjudicated by a court of law. Public access rights and navigability are complex topics, and the outcome of a formal analysis or adjudication for the upper segment of the Chattooga WSR is uncertain. According to FSM 2354.14 - Navigability of Rivers, “Most rivers in the country have not been adjudicated as navigable or non-navigable. Consider them non-navigable until adjudicated otherwise.” Until decisions about boating are made for the sections of the river with public land along them, or public access rights on this reach are determined, the U.S. Forest Service considers this decision to be beyond the current scope of analysis. (Chapter 2, Section 2.4, p. 45)

Finally, in Chapter 3 of EA (pp. 51-397) discloses at length the direct, indirect, and cumulative effects respective to each resource and alternative.

Project Record item 183 is a document signed by Jerome Thomas dated September 26, 2007 regarding direction on the range of alternatives for Management of the Upper Chattooga River. The document specifically states:

The analysis teams are directed to follow the recommendations provided in the enclosed document, "Recommendations Regarding the Range of Alternatives for Management of the Upper Chattooga River."

"In light of the factors discussed above, the Responsible Officials for the plan amendments addressing management of the upper Chattooga River are advised to defer any management decisions that would alter the current status of boating opportunity from Grimshawes Bridge to the southern end of the Rust property. Any preliminary alternatives which contain this river segment should be eliminated from detailed consideration in the environmental assessment currently underway. Any new alternatives developed during the NEPA process that include management for general public use purposes should not include this segment of the river."

The responsible Forest Supervisors support this direction, which goes into effect immediately, in considering alternatives included in the August scoping letter, any new alternatives, and in communicating our analysis process to stakeholders.

Finding

I find the FS is in compliance with NEPA and the Forest Service Environmental Policy and Procedures Handbook.

Issue 7 Whether the analysis complies with the 2004 management plan and EIS and Remand Order.

The appellant contends:

VII. Failure to consider and study the entire wild and scenic portion of the river conflicts with rest of the 2004 management plan and EIS and Remand Order

The geographic scope of the Environmental Assessment and capacity analysis ignores the geographic scope of assessment outlined by the Forest Service Chief in 2005. The spatial scope of the ordered Visitor Capacity Analysis was defined by the Forest Chief order under the 2005 Decision for Appeal [#04-13-00-0026] (2005 Decision). The 2005 Decision directed the Regional Forester to "conduct the appropriate visitor use capacity analysis, including non- commercial boating use, and to adjust or amend, as appropriate, the RLRMP to reflect a new decision based on the findings". (Appeal, p. 9)

The 2005 Decision for Appeal states the following:

Section 10(a) of the WSRA requires the river-administering agency to protect and enhance the values which caused a river to be added to the National System. These values are expressed in Section 1 (b) as the river's free-flowing condition, water quality, and outstanding remarkable values (ORVs). The Interagency Guidelines (1982) interpret the direction in Section 10(a) as a "nondegradation and enhancement policy for all designated rivers, regardless of classification." (p.4)

Specific to recreation as an ORV, the Interagency Guidelines direct public use "be regulated and distributed where necessary to protect and enhance...the resource values of the river area." Agency policy (FSM 2354.41) identifies factors to consider in developing direction for recreation visitor use in a wild and scenic river (WSR) corridor including the capability of the physical environment, desires of present and potential users, diversity of recreation opportunities within the geographic area, and budgetary, personnel and technical considerations. If it becomes necessary to limit use, "ensure that all potential users have a fair and equitable chance to obtain access to the river." (p. 5)

The Wilderness Act directs that areas designated as wilderness "be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness"(Section 2(a) of the Wilderness Act). Section 2(c) of the Wilderness Act defines wilderness, in part, as an area with "outstanding opportunities for solitude or a primitive or unconfined type of recreation." Additionally, Section 4(b) states that: "Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreation, scenic, scientific, educational, conservation, and historical use." Regulations developed for administration of National Forest wilderness establish that "wilderness will be made available for human use to the optimum extent consistent with the maintenance of primitive conditions" (36 CFR 293.2(b)). (p. 5)

After careful review of the record, particularly Appendix H, I am reversing the Regional Forester's decision to continue to exclude boating on the Chattooga WSR above Highway 28. I find the Regional Forester does not provide an adequate basis for continuing the ban on boating above Highway 28. Because the record provided to me does not contain the evidence to continue the boating ban, his decision is not consistent with the direction in Section 10(a) of the WSRA or Sections 2(a) and 4(b) of the Wilderness Act or agency regulations implementing these Acts. (p. 6)

I am directing the Regional Forester to conduct the appropriate visitor use capacity analysis, including non-commercial boat use; and to adjust or amend, as appropriate, the RLRMP to reflect a new decision based on the findings. (p. 6)

The DN/FONSI (Sumter, p. 1) states that the Purpose and Need for the Decision is the following:

1. Responds to an appeal decision on the 2004 Sumter Revised LRMP;
2. Provides consistent management of the upper segment of the Chattooga WSR on all three national forest; and
3. Preserves the upper segment of the Chattooga WSR's free-flowing condition, protects its water quality and protects its outstandingly remarkable values (as required by the Wild

and Scenic Rivers Act [WSRA]), as well as preserves the wilderness character of the Ellicott Rock Wilderness (as required by the Wilderness Act).”

DN/FOSNI (p. 3) states under Section 3.0 Decision that “I have decided to implement Alternative 13A. The scope of my decision is limited to the upper segment of the Chattooga WSR. However, I made the decision within the context of the entire river...”

Finding

I find the analysis complies with the 2004 management plan and EIS and Remand Order.

Issue 8 Whether the analysis complies with Section 2 of the Wilderness Act.

The appellant contends:

VIII. Failure to consider and study the entire wild and scenic portion of the river violates Section 2 of the Wilderness Act (Appeal, p. 10)

The scope of the decision is defined in the EA (p. 1) in Chapter 1, section 1.1: “The scope of this decision is limited to the upper segment of the Chattooga WSR, but will be considered within the context of the entire Chattooga WSR. The Decision Notice (DN, p. 2) also states the scope of the decision is limited to the upper segment of the Chattooga WSR; however, the Deciding Official made the decision within the context of the entire river. The Sumter Revised FLRMP (pp. 3-8 to 3-17), the FLRMP for the Chattahoochee-Oconee National Forest (pp. 3-19 to 3-43), and the FLRMP Amendment 5 for the Nantahala and Pisgah National Forests in North Carolina (pp. III-167 to III-172) contain a comprehensive river management plan, standards, and desired future conditions for the entire WSR corridor, including the section below Highway 28.

The EA (p. 68) defines capacity as the amount and type of use that protects and enhances river values. The EA states (EA, p. 68) the goal of conducting the Limits of Acceptable Change process was to protect river values by ensuring impacts do not exceed acceptable levels. Appendix G of the EA (p. 482) states monitoring of capacity levels will determine if boating contributes to higher use while still meeting current levels of opportunities for solitude without degrading the ORVs of the river. The EA describes (p. 73) how the analysis team used logic-based calculations to estimate encounter levels in the upper segment of the Chattooga and during different times, relate them to different use levels, and compare encounter levels to user tolerances for encounters; these analyses allowed the team to develop estimates of use levels that would keep encounters from impacting the desired condition, thus protecting the Recreation ORV. Furthermore, the Decision Notice (p. 5) notes that components of the decision relating to capacity, parking, group size limits, and actions to designate trails, campsites, put-ins and take-outs will maintain or increase opportunities for solitude.

Finding

I find the decisions were made in the context of the entire river, and that by setting capacity levels to maintain or increase opportunities for solitude and a primitive and unconfined type of recreation the decision complies with Section 2 of the Wilderness Act.

Issue 9**Whether the analysis complies with the APA and NEPA.****The appellant contends:**

- A. SECOND POTENTIAL ERROR: The Forest Service used unlawful, biased and arbitrary procedures that violated the Administrative Procedures Act and NEPA (Appeal, p. 11)**

Under the Administrative Procedures Act (“APA”), agency actions should be reversed if they are found to be "arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Section 706(2)(D) of Title 5 of the APA likewise provides that agency action should be set aside that was reached “without observance of procedure required by law.” Under NEPA, an EA must “rigorously explore” and “objectively evaluate” the effects of expanding boating as required under 40 C.F.R. § 1502.14(a). Unfortunately, this EA makes conclusions that were not researched, inconsistent with agency assessments elsewhere and/or contrary to collected facts during the underlying process. Many statements within the EA are biased, illogical and irrational attempts to justify the preferred alternative violating both the APA and NEPA.

- B. Despite the obvious bias, the USFS initiated a recreational study using the *Flow and Recreation*, even though this concern was highlighted by WCA members in comments prior to the initiation of the analysis. The *forward* for the 2005 guide indicated that this new guide was meant to ‘complement’ a previous guide published by Mr. Whitaker...Although CRC’s highly-biased assumptions regarding the behavior of anglers were based entirely on flows, assumed anglers would not fish during less-than-perfect flows both in direct contradiction to his 1993 guidebook, the hypothesis proclaimed prior to initiation of analysis was presented as “findings” in his 2007 report and included in the 2012 EA. The contradictions are outlined in (Attachment A-5 FISH). (Appeal pp. 11-12)**
- C. The Biological Assessment and the 2012 EA base impacts and affects from expanding boating on the boater relied on information supplied by CRC. CRC underestimated boater impacts by ignoring them, by misrepresenting data or by understating their consequence. This underestimation of boating impacts has a ripple effect throughout the EA, since each section draws conclusions from CRC’s erroneous assumptions on boating, thereby creating a grossly deficient EA... Despite the contradictions, the EA bases all assumptions on riparian impact and affects upon the flawed boating assessment conducted by CRC. (Appeal, p. 13)**
- D. So despite NEPA requiring that “Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses”[40 CFR § 1502.24], and despite the APA’s requirement of un-biased decision-making, the current EA published by the agency appears determined to publish none of the negative effects its preferred alternative will have on the resource and to other visitors. The agency’s biased results-driven analysis is**

also evident in its push the boating put-in spot as far upstream as it can, in spite of the evidence and prior contradictory statements... This also evidences an unlawful decision-making process.(Appeal, p. 14)

- E. A judicial review of an agency decision under the standards set forth in the APA is... The Forest Service's biased decision-making clearly violates this rule...**

Section 706(2)(A) requires a finding that the actual choice made was not "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." To make this finding the court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.

Id. at 416. The Forest Service's biased decision-making clearly violates this rule. (Appeal, p. 15)

- F. So despite NEPA requiring that "Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses"[40 CFR § 1502.24], and despite the APA's requirement of un-biased decision-making, the current EA published by the agency appears determined to publish none of the negative effects its preferred alternative will have on the resource and to other visitors. The agency's biased results-driven analysis is also evident in its push the boating put-in spot as far upstream as it can, in spite of the evidence and prior contradictory statements...(Appeal, p. 14)**

- G. A judicial review of an agency decision under the standards set forth in the APA is... The Forest Service's biased decision-making clearly violates this rule. (Appeal, p. 15)**

The 2005 Decision for Appeal states the following:

Section 10(a) of the WSRA requires the river-administering agency to protect and enhance the values which caused a river to be added to the National System. These values are expressed in Section 1 (b) as the river's free-flowing condition, water quality, and outstanding remarkable values (ORVs). The Interagency Guidelines (1982) interpret the direction in Section 10(a) as a "nondegradation and enhancement policy for all designated rivers, regardless of classification." (p.4)

Specific to recreation as an ORV, the Interagency Guidelines direct public use "be regulated and distributed where necessary to protect and enhance...the resource values of the river area." Agency policy (FSM 2354.41) identifies factors to consider in developing direction for recreation visitor use in a wild and scenic river (WSR) corridor including the capability of the physical environment, desires of present and potential users, diversity of recreation opportunities within the geographic area, and budgetary, personnel and technical considerations. If it becomes necessary to limit use, "ensure that all potential users have a fair and equitable chance to obtain access to the river." (p.5)

The Wilderness Act directs that areas designated as wilderness "be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness"(Section 2(a) of the Wilderness Act). Section 2(c) of the Wilderness Act defines wilderness, in part, as an area with "outstanding opportunities for solitude or a primitive or unconfined type of recreation." Additionally, Section 4(b) states that: "Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreation, scenic, scientific, educational, conservation, and historical use." Regulations developed for administration of National Forest wilderness establish that "wilderness will be made available for human use to the optimum extent consistent with the maintenance of primitive conditions" (36 CFR 293.2(b)). (p. 5)

After careful review of the record, particularly Appendix H, I am reversing the Regional Forester's decision to continue to exclude boating on the Chattooga WSR above Highway 28. I find the Regional Forester does not provide an adequate basis for continuing the ban on boating above Highway 28. Because the record provided to me does not contain the evidence to continue the boating ban, his decision is not consistent with the direction in Section 10(a) of the WSRA or Sections 2(a) and 4(b) of the Wilderness Act or agency regulations implementing these Acts. (p. 6)

I am directing the Regional Forester to conduct the appropriate visitor use capacity analysis, including non-commercial boat use; and to adjust or amend, as appropriate, the RLRMP to reflect a new decision based on the findings. (p. 6)

The EA states the following:

Specific need for action statements and relevant laws are summarized below:

- A. Action is needed to respond to an appeal decision on the Sumter Land and Resource Management Plan (2004). (p.1)
- B. Action is needed to provide consistent management of the upper segment of the Chattooga WSR on all three national forests. (p.3)
- C. Action is needed to preserve the upper segment of the Chattooga WSR's free-flowing condition, protect its water quality and protect and enhance its ORVs, as well as preserve the wilderness character of the Ellicott Rock Wilderness. (p.3)
 1. Wild and Scenic Rivers Act (p. 3)
 2. Wilderness Act (p. 4)
 3. Potential conflict between WSRA and Wilderness Act (p. 5)

1.4 Decisions to be Made

Decisions to be made are specific to the upper segment of the Chattooga WSR. Management of the river below Highway 28 was not challenged in the 2004 Sumter RLRMP and is not subject to further review. Management activities are considered within the context of the entire Chattooga WSR and are analyzed in the cumulative effects sections in Chapter 3. (p. 6)

1.5 Public Involvement

The public has shown considerable interest in management of the upper segment of the Chattooga WSR since American Whitewater et al. appealed the 2004 Sumter RLRMP. During the last seven years, the U.S. Forest Service has encouraged and documented public involvement throughout the process. All documents related to public involvement can be found in the project record and on the Francis Marion and Sumter National Forests' website at <http://fs.usda.gov/goto/scnfs/upperchattooga...> (p. 6)

Chapter 2 Alternatives

2.1 Summary

The U.S. Forest Service has developed several alternatives that would meet the purpose and need described in Chapter 1. All alternatives preserve the Chattooga WSR's free-flowing condition, protect its water quality and protect its ORVs as required by the WSRA. All alternatives also preserve the wilderness character of Ellicott Rock Wilderness as required by the Wilderness Act. However, the alternatives vary the type and amount of recreation use, as well as other management actions, on different reaches of the upper river segment to assess the trade-offs of providing different mixes of high-quality recreation opportunities. The scope of the alternatives is limited to providing management direction for the upper segment of the Chattooga WSR, consistent with the appeal decision described in the purpose and need. (p. 22)

Within in the EA, documentation occurs specifically: Section 2.2 Alternatives Considered in Detail (pp. 23-41) describe in detail the alternatives; Section 2.3 Monitoring and Adaptive Management (p. 42), Section 2.4 Alternatives Considered But Not Evaluated In Detail (pp. 45-47), Section 2.5 Comparison of the Alternatives Considered in Detail (pp 48-50), Chapter 3 Affected Environment and Environmental Consequences (p. 51-399), and Appendixes (pp. 400-485) for compliance of NEPA.

The DN/FONSI (Sumter, p. 1) states that the Purpose and Need for the Decision is the following:

1. Responds to an appeal decision on the 2004 Sumter Revised LRMP;
2. Provides consistent management of the upper segment of the Chattooga WSR on all three national forest; and
3. Preserves the upper segment of the Chattooga WSR's free-flowing condition, protects its water quality and protects its outstandingly remarkable values (as required by the Wild and Scenic Rivers Act [WSRA]), as well as preserves the wilderness character of the Ellicott Rock Wilderness (as required by the Wilderness Act)."

DN/FOSNI (p. 3) states under Section 3.0 Decision that "I have decided to implement Alternative 13A. The scope of my decision is limited to the upper segment of the Chattooga WSR. However, I made the decision within the context of the entire river..."

Project Record item 183 is a document signed by Jerome Thomas dated September 26, 2007 regarding direction on the range of alternatives for Management of the Upper Chattooga River. The document specifically states:

The analysis teams are directed to follow the recommendations provided in the enclosed document, "Recommendations Regarding the Range of Alternatives for Management of the Upper Chattooga River."

“In light of the factors discussed above, the Responsible Officials for the plan amendments addressing management of the upper Chattooga River are advised to defer any management decisions that would alter the current status of boating opportunity from Grimshawes Bridge to the southern end of the Rust property. Any preliminary alternatives which contain this river segment should be eliminated from detailed consideration in the environmental assessment currently underway. Any new alternatives developed during the NEPA process that include management for general public use purposes should not include this segment of the river.”

The responsible Forest Supervisors support this direction, which goes into effect immediately, in considering alternatives included in the August scoping letter, any new alternatives, and in communicating our analysis process to stakeholders.

In addition, Project Record Tabs (12, 13, 89, 91, 94, 94.1, 97, 158, 160, 161, 162, 164, 165, 166, 167, 168, 171, 173, 176, 201, 201.1, 225, 230, 231, 237, 238, 336, 336.1, 342, 345, 347, 348, 349, 350, 352, 353, 354, 413, 415, 416, 417, 419, and 420) documents an extensive range of information used for the analysis and decision making process.

CRC (pp. 54-57) adequately addressed the impacts to riparian areas from boaters in their *Assessing Visitor Capacity & Conflict on the Upper Chattooga* report dated June 2007 by stating:

1) “Many biophysical impacts are related to pioneering users, so potential “new” uses such as boating deserve attention and monitoring...As a potential new user group, non-motorized boaters are unlikely to camp from their boats, would mostly use existing trails at access points, and represent a low level disturbance to wildlife. However, they would probably create a small number of portage and attraction site trails, contribute litter proportional to their numbers, and utilize car-accessible dispersed or developed camping sites.”;

2) “Stakeholders have discussed potential effects of in-water users on salamanders or other amphibians. Some rare salamanders (e.g., hellbenders, which can exceed 20 inches, and green salamanders) occur in the Upper Chattooga, and critical habitat may include damp rocks and cliffs along the river where recreation users may visit. It is beyond the scope of this report to assess specific impacts from these activities or boaters, but the frequency and extent of in-channel use on the Upper Chattooga is probably limited to a small portion of the river and day”; and

3) “Recreation use can impact fisheries in several ways, but one common issue is bank trampling. Vegetation impacts in riparian zones may occur with even low to moderate levels of use, reducing habitat and cover for fish or other aquatic species (Leung and Marion, 2000; Liddle & Scorgie, 1980; Liddle, 1997). Erosion and trail mileage estimates from Forest Service monitoring effort did not address bank trampling specifically, except to the extent that user trails within 20 feet of the river were identified. Bank trampling typically refers to impacts closer to the water.”

Documents relating to the 2009 decision have been withdrawn. The 2012 EA (EA, p. 398) was prepared by an agency interdisciplinary team. Encounter calculations in the 2012 EA (EA, p. 419) are based on models developed by the US Forest Service to analyze how encounters might change as use levels change. Information on visitor use considered in the EA include: estimates

collected by researchers from users contacted at major trailheads (the Rutlin, 1995 study (EA, p. 420)); the Use Estimation Workshop (Berger and CRC, 2007); a study on group size limits in wilderness (Monz et al, 2000 (EA, p. 133)); research on median tolerances for encounters within high-use wilderness (Dawson and Alberga, 2003 (EA, p. 132); an assessment of Values, Beliefs and Attitudes (VBAs) drawn from public comments received from 2005 to 2009 (EA, p. 446); a 1995 study of diverse public opinions (1995 DFC Report (EA p. 449)); a 1996 analysis of ORVs on the Chattooga (EA, p. 449); the Public Involvement and Limits of Acceptable Change process public meetings from 2004-2005 (EA, p. 454); numerous reports concerning capacity and conflict analysis (EA, p. 456); data from the National Survey on Recreation and the Environment (Cordell 2010a, b and c (EA, p. 466)); and information from *Capacity & Conflict on the Upper Chattooga River: An integrated analysis of the 2006-2007 reports*” (Project Record #171) prepared for the Forest Service by Confluence Research and Consulting in June 2007 which highlights and integrates key findings from a number of reports, field panels, fieldwork, informal discussions with public stakeholders and review of public comments, and peer-reviewed academic and professional journals (*Capacity & Conflict on the Upper Chattooga River*, p. 5).

Finding

I find the analysis complies with the Administrative Procedures Act and the National Environmental Policy Act.

Issue 10 Whether the analysis underestimates the riparian impacts.

The appellant contends: “...watershed improvement projects that would close hiker access and reduce backpacker capacity are not listed in the EA...” (Appeal, p. 15)

The EA (Table 2.2-8 Alternative 13A, p. 39) lists the decision points associated with the three Forest Plan Amendments included in Alternative 13A that would, once site-specific NEPA is conducted, improve the watershed condition.

CRC adequately addressed the impacts to riparian areas from boaters in their *Assessing Visitor Capacity & Conflict on the Upper Chattooga* report (p. 54) dated June 2007 by stating: “Recreation use can impact fisheries in several ways, but one common issue is bank trampling. Vegetation impacts in riparian zones may occur with even low to moderate levels of use, reducing habitat and cover for fish or other aquatic species (Leung and Marion, 2000; Liddle & Scorgie, 1980; Liddle, 1997). Erosion and trail mileage estimates from Forest Service monitoring effort did not address bank trampling specifically, except to the extent that user trails within 20 feet of the river were identified. Bank trampling typically refers to impacts closer to the water.”

The EA (p. 156) addresses the potential for sedimentation into the Chattooga River associated with trail erosion by stating: “Trail erosion and sediment input and turbidity were identified as an existing impact issue on the river by Whittaker and Shelby (2007)”.

The EA (Appendix G, pp. 483-485) addresses monitoring Federally-listed species, Sensitive plant species, and the use of adaptive management to address any problems revealed through monitoring, to include those species that inhabit riparian areas.

The Sumter National Forest DN/FONSI (Item #13 and #14, p. 3) states: “Adopt the monitoring plan in Appendix G of the EA to help determine whether my decision is producing the desired outcomes and avoiding unintended consequences... Incorporate the use of adaptive management to address any problems revealed through monitoring.”

The Chattahoochee-Oconee National Forest DN/FONSI (Item #13 and #14, p. 5) states: “Adopt the monitoring plan in Appendix G of the EA to help determine whether my decision is producing the desired outcomes and avoiding unintended consequences... Incorporate the use of adaptive management to address any problems revealed through monitoring.”

The Nantahala National Forest DN/FONSI (Item #13 and #14, p. 3) states: “Adopt the monitoring plan in Appendix G of the EA to help determine whether my decision is producing the desired outcomes and avoiding unintended consequences... Incorporate the use of adaptive management to address any problems revealed through monitoring.”

Finding

The analysis adequately estimates impacts to riparian areas.

Issue 11 Whether the analysis selection of affected areas by the Agency is adequate.

The appellant contends:

A. Inconsistent Selection of *Affected Areas* by the Agency (Appeal, p. 16)

The scope of the decision is defined in the EA (p. 1) in Chapter 1, section 1.1: “The scope of this decision is limited to the upper segment of the Chattooga WSR, but will be considered within the context of the entire Chattooga WSR. The Decision Notice (p. 2) also states the scope of the decision is limited to the upper segment of the Chattooga WSR; however, the Deciding Official made the decision within the context of the entire river. The FEIS for the Sumter Revised FLRMP (p. 3-302) completed a comprehensive inventory of rivers on the Sumter NF; seventeen streams or rivers were reviewed for potential eligibility, and the Sumter Revised FLRMP (Goal 29, p. 2-26) contains goals for managing those rivers found eligible. In addition, the Sumter Revised FLRMP (pp. 3-8 to 3-17) contains a comprehensive river management plan, standards, and desired future conditions for the entire WSR corridor, including the section below Highway 28. Furthermore, the Chattahoochee-Oconee NF FLRMP contains goals (Goal 46, p. 2-43) and standards (Management Area 2B, pp. 3-34 to 3-43) for all streams designated, recommended, or eligible for the NW&S River system. The Nantahala FLRMP Amendment 5 (pp. III-167-172) contains standards for both the Chattooga and Horsepasture W&S Rivers.

Finding

I find that the agency selected an appropriate area of analysis for the decisions by analyzing the Upper Chattooga WSR corridor as directed by the 2005 Appeal Decision on the Sumter’s FLRMP to provide consistent management of the upper segment of the Chattooga WSR.

Issue 12 Whether the analysis complies with recreational zoning policy.**The appellant contends:****A. The EA undermines Zoning, Creating a Recreational Monoculture (Appeal, p. 16)**

Forest Service policy notes “when it becomes necessary to limit use, ensure that all potential users have a fair and equitable chance to obtain access to the river” (FSM 2354.41a, p. 48 of 77). The EA (p. 64) states the zoning concept is fundamental to many recreation management planning efforts and is not in opposition to the policy in FSM 2354.41a; the Forest Service recognizes that not every recreation use can or should be provided on every mile of river, and considers zoning and capacities important tools for addressing potential conflicting uses or impacts. The EA (p. 85) notes that in river settings, zoning by segment or reach is an effective, often-used tool. The EA also notes (p. 67) that many boaters, like other backcountry users, desire backcountry settings that are remote and offer opportunities for solitude; because of high boating use in the lower segment (40,000-70,000 per year) (p. 63), there are few opportunities for remoteness and solitude in the lower segment. The selected Alternative (EA, p. 128) relies on formal seasonal (*December 1 – April 30*), flow (*only when flows reach 350cfs at least once during daylight hours*), and reach (*no boating in Nicholson Fields Reach*) restrictions to separate boaters from other users for most of the year. The EA (p. 85) includes other examples of zoning under existing conditions on the Chattooga WSR include: (1) temporal separation on the lower river between commercially guided use (weekdays and mornings) and self-guided use (generally weekends and afternoons); (2) spatial separation that provides designated trails for horses in the wild and scenic corridor; (3) spatial separation that divides the river into wild, scenic and recreational sections; and (4) spatial and temporal separation by season and reach for different types of fishing.

Finding

I find the analysis complies with recreational zoning policy.

Issue 13 Whether the analysis is consistent in geographic scope within the EA.**The appellant contends:****A. Inconsistent Geographic Scope within this EA: “The Recreational Flow Study, the Biological Assessment, and Environmental Assessment use three divergent geographic boundaries for their assessments.” (p. 17)**

The Recreational Flow Study (Chapter 3 – Whitewater-oriented boating, p. 22-23) analyzed three potential white-water oriented boating reaches on the Upper Chattooga: “(1) *Chattooga Cliffs* from Grimshawes Bridge or Norton Mill Creek confluence to Bull Pen Bridge; (2) *Ellicott Rock* from Bull Pen Bridge to Burrells Ford; and (3) *Rock Gorge* from Burrells Ford to Lick Log Creek confluence or Highway 28.”

The BA/BE analyzed the area identified in Figure 1 of the EA as the “Upper Segment Scope of Decision to Be Made”. (EA, unnumbered page) The *affected area* the appellant refers to on page 17 of their appeal, encompasses the Chattooga Wild & Scenic River Corridor, not simply the flowing water. The BA/BE rightfully analyzes the adjacent riparian areas within the river corridor’s boundary beyond just the three boating reaches specifically analyzed in the flow study, as there are terrestrial wildlife, plants, and aquatic species to consider.

The 1.7 miles of privately-owned land within the area of analysis is not subject to Forest Plan direction and therefore is outside the scope of the proposed action.

Finding

The analysis conducted by the Recreational Flow Study, the Biological Assessment, and the Environmental Assessment are consistent in geographic scope within the EA.

Issue 14 Whether recreation in aggregate is the value adequately disclosed.

The appellant contends:

A. Recreation IN AGGREGATE is the Value. (Appeal, p. 17)

The EA (pp. 1-3) includes as part of the purpose and need the need to respond to an appeal decision of the Sumter NF’s Revised Forest and Land Management Plan (Revised FLRMP). This includes reassessing the boating prohibition (2005 Decision for Appeal, p. 6; EA, p. 2) on the upper Chattooga as part of a broader examination of visitor capacity issues on the upper segment. In conducting the visitor use capacity, the Forest Service identified (EA, p. 2; see also *Capacity & Conflict on the Upper Chattooga River: An integrated analysis of 2006-2007 reports; Project Record #171*) several additional visitor impact concerns on the upper segment, and recognized that boating issues could not be resolved without a comprehensive review of all recreation uses and impacts in the Chattooga River corridor. The EA (pp. 86-140) discloses the direct, indirect, and cumulative effects, both positive and negative, of recreational use conflicts and boating access of all alternatives.

Finding

I find that recreation in aggregate value was adequately disclosed.

Issue 15 Whether the impacts on swimming is adequately disclosed in the EA.

The appellant contends:

A. Request for relief: The EA should state clearly that the agency did not study swimming, and that before considering expanding boating after April 1st swimming must be studied. All speculative references to when and where people swim should be eliminated from the EA. (Appeal, p. 18)

The EA (p. 19) includes opportunities for swimming as one of the activities discussed in the Recreation ORV. Swimming is described (EA, p. 63) as a type of use that can be conducted on either the upper or lower segments of the river. Swimming is generally considered a frontcountry activity that occurs where development is greater, as opposed to the primitive and semi-primitive settings of backcountry areas (EA, p. 21; Table 3.2.1-1, p. 65)). Frontcountry conditions are described in the EA (pp. 69-72); in addition, swimming is identified as a flow-dependent activity (EA, p. 76) in a discussion of the effects of adding boating on use patterns and interaction with other user groups. It is also identified (EA, p. 81) as an activity that occurs mostly in the warmer months when water temperatures are warmer.

Chapter 3 of the EA analyzes social impacts (encounters and conflict) among all existing users and potential new users in the corridor in Section 3.2.1, Recreation ORV (EA, pp. 86-140 and pp. 381-384). Some users (e.g.: hikers, backpackers and anglers) were used as proxy for others (e.g.: birders, swimmers, hunters) (EA, p. 420); see Appendix D of the EA for the assumptions and calculations of encounters (EA, pp. 419-423). The action alternatives (EA, pp. 90-140) set frontcountry capacities in terms of Groups at One Time to prevent crowding and congestion.

Potential conflicts between swimmers and boaters (EA, p. 102) are discussed at length in Alternative 8, which proposed year-round boating. The selected Alternative (EA, p. 128) permits boating on the upper Chattooga only between December 1-April 30, separating boaters from other users for most of the year. The agency also conducted a Social Impact Analysis (EA, pp. 461-462) that included an assessment of Values, Beliefs and Attitudes (VBAs) expressed in public comment letters from 2005 -2009, many of which included comments on swimming which were considered during the analysis.

Finding

I find the analysis adequately disclosed impacts of allowing boating on other users, including swimming as a recreational use.

Issue 16 Whether the EA adequately assessed conflicts among recreational users in the Chattooga Cliffs.

The appellant contends:

A. Errors Describing Conflict in the Chattooga Cliffs: The Statements are clearly made not to assess, but rather to justify a desired outcome. (Appeal, p. 19-20)

The EA (pp. 83-84) discusses potential recreation use conflicts on the upper Chattooga from both a 'social values' standpoint and a 'face-to-face conflict' standpoint, recognizing that sharing the river does not have the same consequences for each group. The page cited by Appellant (EA, p. 102) is from the analysis of Alternative 8 which proposed year-round boating, and not the selected Alternative, which permits boating from December 1-April 30, a time when the steeper gradients of the Chattooga Cliffs reach at flows above 350cfs are unlikely to be fished. During the January 2007 expert panel flow assessments, no anglers were interested in fishing the estimated 350-400cfs flows present (EA, p. 124 and p. 130). The selected Alternative

(EA, p. 128) offers ample months of boat-free angling opportunities. The EA does not “dismiss conflict with all angling because live-baiting is illegal” as Appellant contends (citing EA, p. 124, Alternative 8), but instead the EA states that “North Carolina fishing regulations also make bait angling illegal in this reach, so some anglers are less likely to fish here” (EA, p. 102). The EA (pp. 97-103) contains an extensive discussion on boating access and potential conflict with other users in this alternative (Alternative 8) since it allows the highest amount of year-round boating with no restrictions. Several alternatives (11, 12, 13, 13A, pages 108, 115, 122, and 128 respectively) provide several days of whitewater boating opportunities each year, but also minimize the potential for use conflicts on the days that boaters would be present, addressing conflicts from a face-to-face rather than social values perspective.

The EA notes (Table 3.1-3, p. 53) there are 6.1 miles of system trails in the Chattooga Cliffs reach, plus an additional 1.9 miles of user-created trails. The Chattooga Cliffs reach is described as a narrower stretch of stream with steep terrain (EA, p. 79), and that trails along this reach offer less access to the water for fishing or swimming, as most are farther than 100 feet from the river. The selected Alternative (EA, p. 129, Table 3.2.1-24) provides an estimated number of days with boating opportunities (39 days) and an estimated number of days without boating opportunities (326 days) when hikers could expect to have a boat-free experience.

Finding

I find that the EA adequately assessed conflicts among recreational users in the Chattooga Cliffs reach of the Upper Segment.

Issue 17 Whether riparian area baseline conditions are adequately presented to the public.

A. Baseline Conditions are not presented to the public:

The appellant contends (p. 20): “The EA discusses the importance of establishing baseline conditions before monitoring...” “However baseline conditions of the riparian zone are not presented to the public, nor are they discussed under the Adaptive Management section.”

The EA (3.4.2 Water and Riparian Corridor, p. 297) discusses baseline conditions of riparian areas by stating: “... the 2007 biophysical inventory that documented intensive recreation use within the corridor, including numerous user-created features (trails and campsites) and erosion sites. These user-created features are often adjacent to streams, which can result in chronic sediment sources. Again, each alternative would have a positive effect on water quality and riparian resources in both the upper segment of the Chattooga WSR...”

The EA (3.4.2 IV Environmental Consequences, p. 303) further discusses baseline conditions by stating: “The cumulative effects analysis assumes that baseline conditions in the Chattooga

watershed are generally good, but some stream segments are impaired due to excessive sedimentation from a combination of past and existing activities...”

The *Assessing Visitor Capacity & Conflict on the Upper Chattooga* report (pp. 45, 54, and 90) makes several recommendations for riparian restoration based on findings in the June 2007 report.

Finding

The EA adequately presents baseline conditions for riparian areas.

Issue 18 Whether the EA adequately considered safety concerns.

The appellant contends:

- A. A review of Visitor Capacity without due consideration of visitor safety would be in violation of the Wild and Scenic River management guidelines. The USFS must consider the severity of each impact; specifically “*The degree to which the proposed action affects public health or safety*” under [1508.27 b 2] (Appeal p. 21).... Utilizing data from a biased source, that contradicts safety data collected elsewhere on this same river, does not meet the objectivity standards required for assessing agency policy.**

Request for relief: To counter the bias safety data used in the EA, the implementation plan should institute a sunshine clause, reverting management of the upper to the 1985 plan upon the second death in the next 20 years, or if five search & rescue operations are required within ten- year period. (Appeal p. 21-22)

The EA (p. 368) examined fatalities and SAR rates on other rivers with similar issues as the Chattooga, including Russell Fork, KY; New River Gorge, WV; Upper Youghigheny, PA; Big South Fork, TN; Cheoah, NC; Nantahala, TN; and the lower segment of the Chattooga itself. The river does not appear to be more or less hazardous when compared to similar rivers (EA, p. 367). Based on estimates from Sumter National Forest district staff (EA, p. 369), roughly 5 to 10 SAR operations are conducted each year. The EA discloses (pp. 367-371) potential direct, indirect, and cumulative effects of various alternatives to human health and safety including estimates of SAR responses, noting that under all action alternatives increased fatalities are unlikely and the potential for a substantial increase in SAR response is still considered low. In fact, the eight-mile gorge segment of the Big South Fork in Tennessee, a segment most like the upper segment of the Chattooga (EA, p. 368), has experienced 1 fatality in about 25 years of regular boating (a 150-day season) and conducts SAR responses about two times a year; impacts from these responses have not been a substantial issue for management. The EA (p. 370) makes no prediction on the actual number of deaths that might occur on the upper segment.

The Forest Service promotes safety on the river (EA, p. 367) by requiring recreationists to use protective equipment in certain river sections; prohibiting certain craft types in some sections; restricting paddling alone in some sections; and posting pertinent safety information on maps,

brochures, websites, permits and signs. The EA notes (p. 63) that boater's skill levels and equipment have progressed since the 1970s and greater numbers of kayakers have the skill to navigate the Upper Chattooga segments safely. The Implementation Strategy (EA, pp. 406-408) focuses on actions that will implement the selected Alternative. Monitoring (Appendix G-Monitoring Plan and Adaptive Management Strategy, EA, pp. 481-485) will indicate whether capacities or other management actions need to be adjusted.

Finding

I find that the environmental analysis adequately discloses the effects of adding boating to the upper segments of the Chattooga WSR on human health and safety in an unbiased manner.