

Species of Conservation Concern (SCC) Objection Review and Response

Francis Marion National Forest

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INTRODUCTION AND TIMELINE FOR IDENTIFICATION OF THE SCC LIST

The Francis Marion is the first national forest to complete their land management plan revision using the 2012 Planning Rule. Consequently, this was one of the first forest revisions to develop a potential SCC and final SCC list. The timeline of this revision process is important because not all SCC-related policy and guidance, other than the 2012 Planning Rule, was in effect during the process.

In December 2013, the forest began their SCC consideration and assessment work with only the 2012 Planning Rule as official direction. The forest submitted their potential SCC list on July 15th, 2014. Because there were no national implementing directives, the Region released interim regional SCC identification guidance on July 21, 2014, using the draft planning directives. On January 30, 2015, over a year into the Francis Marion SCC identification process, the national planning directives were finalized. The Region adjusted their regional guidance based on the final directives. The SCC objection review was conducted recognizing the iterative nature of the SCC list identification process and direction for the Francis Marion.

Anticipating a transition period for forests already in plan revision process, the final directives allowed for adoption of the new direction without retroactive application (Forest Service Manual (FSM) 1920.3 – Policy, paragraph 9b):

- If a plan amendment or a revision has been initiated prior to issuance of the amended directive, the Responsible Official should use the amended directive in any new step or phase of the planning process, but it not required to revisit past steps or phases with the process
- For a phase or step that is ongoing at the time of the issuance of the amended directive, the Responsible Official should incorporate the amended directive to the extent practicable, but may choose to complete that phase or step as planned to avoid significant disruptions to ongoing public engagement and planning schedules:

Therefore, as set forth in FSM 1920.3-Policy, paragraph 9b, the Responsible Official for the Francis Marion was not required to revise past steps such as the assessment, when the final directives of January 30, 2015 were approved by the Deputy Chief.

When the planning directives became effective, the Regional Forester was reviewing the Francis Marion potential list in order to select the species of conservation concern. Forest Service Handbook (FSH) 12.52c addresses “Criteria for Identifying a Species of Conservation Concern” stating that the criteria for identifying species of conservation concern are also the criteria for identifying potential species of conservation concern. The directives state that the Regional Forester has the authority and responsibility to review the rationale and documentation for the potential species of conservation concern provided by the Responsible Official (FSH 21.22a (1)), and determine whether the Best Available Science Information (BASI) indicates they meet the criteria for SCC (FSH 12.52c). The Regional Forester also has the authority and responsibility to “document the rationale for the selection of species of conservation concern” (FSH 1909.12, 21.22a (1) (f)).

In summary, the process to identify the list of potential SCC was not subject to the final directives, as this step in the SCC list identification process was completed prior to the January 30, 2015 effective date of the directives. The Regional Forester's process to select the SCC prior to the release of the DEIS, was subject to the final directives including the transition direction to the Responsible Official. In this case, the Responsible Official *is not required to revise past steps or phases within the process and should incorporate the amended directive to the extent practicable, but may choose to complete that phase or step as planned to avoid significant disruptions*. The finalization of the SCC list for the FEIS were also subject to transition language however, in this case, the Regional Forester *should use the amended directives in any new step or phase of the planning process*. The SCC objection issues were assessed by the Reviewing Officer for compliance with the applicable level of official regulatory and policy guidance;

- List of Potential SCCs – 2012 Planning Rule
- SCC List identified and approved by the Regional Forester - 2012 Planning rule and directives

Timeline

The Forest Supervisor sent a list of potential SCC to the Regional Forester on July 15, 2014. The only official guidance at that point in time was the 2012 planning rule. That list is not subject to the January 30, 2015 directives. However, the Regional Forester is responsible for verifying and documenting the rationale and best available science to inform the SCC list. Therefore, any gaps or additional information needed is the responsibility of the Regional Forester.

The Regional Forester was required to use the January 30, 2015 planning directives within the transition discretion (FSM 1920.3-Policy, paragraph 9b) outlined previously. The Regional Forester identified the SCC list for the Draft EIS on June 18, 2015. The public had a chance to comment on the SCC list during the 90 day comment period for the Draft EIS, August 2015. After close of the comment period for the Draft EIS, the Regional Forester coordinated with the forest staff and modified the SCC List. He identified 67 species as the SCC for the Francis Marion National Forest Plan in an August 11, 2016 memo to the Forest Supervisor.

Regional Guidance

In lieu of final planning directives, the Region used draft guidance to develop the initial version of their 'Choosing SCC' white paper, labeled V2 and dated July 21, 2014, which was sent to the WO and other regions for comment; V2 was the revised version. The final directives are dated January 30, 2015. Compared to previous direction, it contained one new element for choosing SCC: the 'becoming established' clause in 12.52c (pg. 36) that expands the 'known to occur' criterion.

Following conversations about regional differences in SCC procedures, the Region revisited the "Choosing SCC V2 document", producing the "Choosing SCC V3", dated May 5, 2016. Compared to the V2 document, the following changes were made:

- Added the 'becoming established' clause to 'known to occur'.
- Expanded the criteria for assessing 'substantial concern'. This change allowed for the ability to explicitly state issues such as climate change could be used as threats to assess substantial concern – this seems implicit in the V2, so this was a clarification, not a change.

- Added a statement that plan components could not be the basis for dismissing substantial concern – that SCC are designated first; plan components to ensure their persistence are determined following the designation.
- Removed references to draft Forest Service Manual and replaced them with reference to Forest Service Handbook.
- Added explicit direction that G4/5 and S3/4/5 species are unlikely candidates for SCC designations, but G1/2 species should be proposed as SCC.
- Added explicit direction that G and S ranks are used for identifying species for consideration, but SCC proposals/designations are based on the two stated criteria of ‘known to occur’ and ‘substantial concern.’
- Added a statement on the value of public involvement, and emphasized the need to document all species initially considered for SCC proposal in the project record spreadsheet.

SCC OBJECTION ISSUES

Objector: Defenders of Wildlife, Ben Prater lead objector

There was one objection for the Francis Marion Plan Revision that contained issues for both the Francis Marion Forest Plan Revision and SCC identification. The objection contained five main issues or topic areas outlined by the objector. Of these five main topic areas, one was about SCC identification and is described by the objector as:

“The failure of the regional forester to identify some species as SCC where the best available scientific information indicates that there is a substantial concern for persistence in the plan area (36 CFR 219.9(c)).”

Within this topic area, there were a number of sub-issues related to SCC identification on pages 4-9 of the objection. In this objection review and response paper, we divided these sub-issues into the following two 2 broad categories:

- SCC List Criteria and Composition
 - Exclusion based on NatureServe Rankings
 - Exclusion based on Substantial Concern about Persistence
 - Exclusion based on Occurrence Criteria
 - Interpretation of Occurrence Criteria
 - Red Wolf
 - Best Available Scientific Information (BASI) Requirements
- SCC List Identification Process
 - Delegation of Authority for the final SCC list to Francis Marion
 - Public Comment
 - April 12, 2016 comment from DOW
 - Risk to a species within the Plan Area versus the Broader Context

REMEDY(S) PROPOSED BY OBJECTOR

The objector proposed the following remedies:

“The Forest should identify all of the species discussed under Issue 1 as SCC. They may be excluded only after appropriate assessment and analysis that demonstrates that the best available science indicates that there is not a substantial concern for their persistence in the plan area, and there is public review of that determination. Unless and until that happens, this also means that the effects of the revised plan on these species must be evaluated to determine whether plan components provide ecological conditions needed for their persistence. We assume this could be done using the same process that was used for other species (discussed in Issue 4* below).”

* Issue 4 deals with the Ecological Sustainability Analysis

The objector believes the following species should be identified as SCC based on the reasons discussed below:

- Blackbanded sunfish (SNR/G3G4). The species is considered a “state priority.” The conclusory statement that it “does not meet the listing criteria for G/S ranks” is incorrect (for G3) and insufficient to demonstrate that its vulnerability does not indicate substantial concern. (While not listed as the final rationale, its absence for 21 years does not by itself demonstrate that it will not be found again in the plan area.)
- Wood thrush (S3/G5). Rejected based only on S3 rank. No information is provided to counter the concern for the species statewide.
- Star-nosed mole (S3/G5). Rejected based only on S3 rank. No information is provided to counter the concern for the species statewide.
- Eastern woodrat (S3). No information is provided to counter the concern for the species statewide, and the fact that it is a “CWCP priority species” and “critically imperiled” in adjacent North Carolina.
- Eastern coral snake (S2/G5). It was not included because it is not known to occur in the plan area, but it appears from the Forest “comment” that new occurrence information has not been taken into account. Even based on a most recent occurrence of 10 years, the species should be considered known to occur.
- Florida green water snake (S2/G5). The conclusory statement that it “does not meet the listing criteria for G rank” ignores the state rank and “CWCP priority,” and is insufficient to demonstrate that its vulnerability does not indicate substantial concern.
- Northern pine snake (S3S4/G4). Rejected based solely on NatureServe ranks. The Forest comments indicate additional concern for persistence, and no information is provided to counter these concerns for the species.
- Amphicarpum muehlenbergianum (S2S3/G4). The rationale incorrectly states that it does not meet state rank criteria.

- Asplenium heteroresiliens (S1/G2). The comment indicates that the species is “likely extirpated.” The only evidence in support of this is a most recent occurrence of 1981. Additional rationale is needed to explain why recurrence is unlikely.
- Carex chapmanii (S1/G3). The comment indicates that the species is “likely extirpated.” The only evidence in support of this is a most recent occurrence of 1962. Additional rationale is needed to explain why recurrence is not possible (especially if the threat of “plantation pine forestry” is removed).
- Carex decomposita (S2/G3). The species was excluded because it is not known to occur, but the comment also states that its habitat is stable on the forest. The most recent occurrence was 1998, and there is no explanation of why it might not recur.
- Cayaponia quinqueloba (S1?/G4). The rationale is “does not meet the criteria for G rank.” This fails to address the S rank.
- Eleocharis tricostata (S2?/G4). The rationale is “does not meet the criteria for G rank.” This fails to address the S rank.
- Iris tridentata (SNR/G3G4). The rationale incorrectly states that it does not meet global rank criteria.
- Litsea aestivalis (S3/G3). The conclusory statement “substantial concern for persistence not demonstrated through threats or population decline,” based only the Forest statement “persistence likely,” does not counter the vulnerability rankings.
- Rhynchospora inundata (S2?/G4?). The rationale is “does not meet the criteria for G rank.” This fails to address the S rank.
- Sageretia minutiflora (S3/G4). The rationale is “does not meet listing criteria.” This ignores the S rank, and no information is provided to counter the concern for the species statewide.

And the objector questions the rationale and documentation thereof for excluding the following species from the SCC list:

- Agrimonia incisa (S2/G3). “Habitat is abundant and stable.”
- Peltandra sagittifolia (S2/G3G4). “Populations stable in pocosins.”
- Pieris phillyreifolia (S1/G3). “Habitat stable, populations extensive.”
- Plantago sparsiflora (S2/G3). “Common along select roadsides.”
- Rhexia aristosa (S3/G3). “Population numbers appear to be stable.”
- Rhynchospora tracyi (S3/G4). “Population numbers appear to be stable.”
- Tridens carolinianus (S1/G3G4). “Population numbers appear to be stable.”
- Xyris elliotii (S1/G4). “Population numbers appear to be stable.”

The objector also proposes the following remedy specific to the red wolf:

“Red wolf habitat warrants protection in the forest plan as a listed species. Alternatively, NatureServe ranks it as a G1 species, and reoccurrence in the plan area is foreseeable during the life of the plan. If the red wolf cannot be considered a listed species on the Francis Marion, it should be identified as an SCC.”

Regulation and Policy Related to SCC Identification Consideration and Criteria

The regulation and/or policy for these issues fall under 36 CFR 219 (which is the 2012 Planning Rule); and FSH 1909.12, Chapters 10, 20 and 40. The 2012 Planning Rule defines species of conservation concern as follows:

A species of conservation concern is a species, other than federally recognized threatened, endangered, proposed, or candidate species, that is known to occur in the plan area and for which the Regional Forester has determined that the best available scientific information indicates substantial concern about the species' capability to persist over the long-term in the plan area (36 CFR 219.9).

FSH 1909.12, 12.52c "Criteria for Identifying a Species of Conservation Concern" states that the criteria for identifying species of conservation concern are also the criteria for identifying potential species of conservation concern. The directives state that the Regional Forester has the authority and responsibility to review the rationale and documentation for the potential species of conservation concern provided by the Responsible Official (FSH 21.22a (1)), and determine whether the BASI indicates they meet the criteria for SCC (FSH 12.52c). The Regional Forester also has the authority and responsibility to "document the rationale for the selection of species of conservation concern" (FSH 1909.12, 21.22a (1) (f)).

FSH 1909.12, 12.52d, outlines the species categories to consider for species of conservation concern. Species that have status ranks of G/T1 or G/T2 on the NatureServe Ranking system and species that were removed within the past 5 years from the Federal list of threatened or endangered species, and other delisted species that the regulatory agency still monitors "must be considered." Categories of species that "should be considered" are:

- a. Species with status ranks of G/T3 or S1 or S2 on the NatureServe ranking system. See exhibit 01 for description of NatureServe Conservation Status Ranks.
- b. Species listed as threatened or endangered by relevant States, federally recognized Tribes, or Alaska Native Corporations.
- c. Species identified by Federal, State, federally recognized Tribes, or Alaska Native Corporations as a high priority for conservation.
- d. Species identified as species of conservation concern in adjoining National Forest System plan areas (including plan areas across regional boundaries).
- e. Species that have been petitioned for Federal listing and for which a positive "90-day finding" has been made.
- f. Species for which the best available scientific information indicates there is local conservation concern about the species' capability to persist over the long-term in the plan area due to:

- (1) Significant threats, caused by stressors on and off the plan area, to populations or the ecological conditions they depend upon (habitat). These threats include climate change.
- (2) Declining trends in populations or habitat in the plan area.
- (3) Restricted ranges (with corresponding narrow endemics, disjunct populations, or species at the edge of their range).
- (4) Low population numbers or restricted ecological conditions (habitat) within the plan area.

FSH 1909.12, section 12.52c “Criteria for Identifying a Species of Conservation Concern” explains the criteria for identifying species of conservation concern and potential species of conservation concern:

1. The species is native to, and known to occur in, the plan area.

A species is known to occur in a plan area if, at the time of plan development, the best available scientific information indicates that a species is established or is becoming established in the plan area. A species with an individual occurrences in a plan area that are merely “accidental” or “transient,” or are well outside the species’ existing range at the time of plan development, is not established or becoming established in the plan area. If the range of a species is changing so that what is becoming its "normal" range includes the plan area, an individual occurrence should not be considered transient or accidental.

2. The best available scientific information about the species indicates substantial concern about the species’ capability to persist over the long term in the plan area.

If there is insufficient scientific information available to conclude there is a substantial concern about a species’ capability to persist in the plan area over the long-term that species cannot be identified as a species of conservation concern.

If the species is secure and its continued long-term persistence in the plan area is not at risk based on knowledge of its abundance, distribution, lack of threats to persistence, trends in habitat, or responses to management that species cannot be identified as a species of conservation concern. FSH 1909.12 (12.52c).

Regulation and Policy Related to Documentation of BASI

The 2012 Planning Rule sets out requirements for BASI in planning:

“The responsible official shall use the best available scientific information to inform the planning process required by this subpart. In doing so, the responsible official shall determine what information is the most accurate, reliable, and relevant to the issues being considered. The responsible official shall document how the best available scientific information was used to inform the assessment, [and] the plan decision. [...] Such documentation must: Identify what information was determine to be the best available scientific information, explain the basis for that determination, and explain how the information was applied to the issues considered.” (36 CFR 219.3)

For determining SCC, the directives provide that the Regional Forester has authority and responsibility to review the rationale and documentation for potential species of conservation concern provided by the Responsible Official (FSH 21.22a (1)), and determine whether the BASI indicates they meet the criteria for SCC (FSH 12.52c). The Regional Forester also has authority and responsibility to “document the rationale for the selection of species of conservation concern” (FSH 1909.12, 21.22a (1) (f)).

FSH 1909.12 at Zero Code 07.15 clarifies that “citations should be one of the principal methods to show how the BASI was applied to the issues being considered.”

The directives set out requirements for documentation of BASI throughout the SCC identification process. First, the list of species to consider when identifying potential species of conservation concern include species categories identified at FSH 1909.12.52d (2) and 12.52d (3) (as described above). Next, for each species considered when identifying potential species of conservation concern, the directives require documentation of the best available scientific information that supports identifying a species as a potential SCC or not. The FSH 1909.12, (12.52b (3) and 12.52b (4)) provides that the Responsible Official shall:

3. Document the best available scientific information supporting the identification of a species as a potential species of conservation concern.
4. Document the best available scientific information that supports not identifying a species that was considered but not identified as a potential species of conservation concern. Such rationale may include:
 - a. Knowledge of the species abundance, distribution, lack of threats to persistence, trends in habitat, and responses to management, or
 - b. Lack of sufficient scientific information available about the species’ status.

Policy Related to SCC Identification Process

The Regional Forester has the authority and responsibility to review the rationale and documentation for potential SCC provided by the Responsible Official and, based on the review;

“identify the species of conservation concern in coordination with the Responsible Official for the plan area. This authority to identify species of conservation concern may not be delegated.”
FSH 1909.12 (21.22 a)

FSH 1909.12 (12.52a) states the Responsible Official has the authority and responsibility to identify potential species of conservation concern and that the Responsible Official shall:

- “1. Coordinate with the Regional Forester when identifying the potential species of conservation concern. This coordination may be conducted in several ways including:
 - a. The Regional Forester and Responsible Official may jointly identify the potential species of conservation concern for the plan area.
 - b. The Responsible Official may provide an initial list of potential species of conservation concern for review by the Regional Forester, who may concur or request modifications.

c. The Responsible Official and Regional Forester may review and adjust a previously developed list of potential species of conservation concern derived from plan area or multi-plan area studies or broad-scale assessments.

d. The Regional Forester may develop an initial list of potential species of conservation concern for each plan area within the Region and the Responsible Official may analyze the species on this list and any additional species, as appropriate.” FSH 1909.12 (12.52b)

The public is afforded opportunities throughout the forest plan revision process to provide feedback and comment, through the requirements of the 2012 planning rule and the NEPA process. FSH 1909.12, section 21.22a states the Regional Forester has the authority and responsibility to engage the public and invite public input when identifying species of conservation concern, as part of the public participation strategy. Identification of the species of conservation concern for a plan area does not require formal public notification; rather, public notification may be made in any way the responsible official deems appropriate (36 CFR 219.16).

NEPA regulations require an agency preparing a FEIS to assess and consider comments and respond by modifying its analysis or by explaining why the comments do not warrant further agency response (40 CFR 1503.4).

FRANCIS MARION SCC IDENTIFICATION & WHAT'S IN THE PROJECT RECORD

Introduction: The following describes what was found in the Francis Marion Plan Revision final EIS, final plan, Draft Record of Decision, and the project record. As mentioned under the timeline section found on page 2 of this response, the review of the SCC objection issues focused on official direction applicable at various times in the SCC identification process. The following shows the efforts both the Forest and the Region made to work within a very complex, transitional time period.

Project Record: The FEIS (Appendix E, p. 94) describes the overall process that was used to identify SCC for the Francis Marion National Forest. First, it describes how, as directed in FSH 1909.12 Ch.10, 12.52d, the list of species to consider as species of conservation concern was based on a variety of sources. The Francis Marion (FM) SCC Matrix spreadsheet (version 2.1.14, Feb 16, 2016) cited in the objection letter documents the complete list of species considered (all species listed) as well as the subset of those listed as potential SCC (recommended by forest), and the final SCC list as determined by the Regional Forester. In addition, the Draft Forest Plan Assessment documented the potential SCC list as well as information on each species including species rankings for plants (Draft Forest Plan Assessment, Sec 5.2 on p. 247, and Appendix A on p. 517), wildlife (Draft Forest Plan Assessment, Sec 5.3.3 on p. 271, and Table 5-5 on p. 272), and aquatic species (Draft Forest Plan Assessment, Table 5-6, p.275).

A regional white paper developed by the Southern Region in August 2014 was used to “ensure consistency in our criteria for inclusion of species of conservation concern.” The paper describes that “a complete listing of all species considered as species of conservation concern, including criteria used in their designation, including rankings, threats, and number of known occurrences, both on the Francis Marion and within the state, is posted on the Francis Marion and Sumter National Forest website.” This

SCC Matrix includes summarized rationale for why a species either stayed on the lists or were removed from the lists as the forest developed its species considered list, then potential SCC list, and finally the SCC List approved by the Regional Forester.

When the forest began the process of determining SCC, they followed a regional guidance document called “Choosing Species of Conservation Concern” (dated August, 2014) that gave a definition of SCC that included these criteria: [a] a native species, [b] known to occur in the planning unit (where it is stated that there is no definite date standard for when an occurrence becomes historical), and [c] best available scientific information indicates a substantial concern for persistence in the planning area (where persistence is defined as continued existence (36 CFR 219.19) in ecological time, which is the time period associated with ecological processes and is longer than the forest planning cycle, but bounded by processes that can be addressed through ecological analyses).

The regional document also cited then-draft FSH 1909.19, section 12.52, which set out categories of species that must be considered for SCC designation. [NOTE: this regional document was compiled prior to the finalization of the national planning directives in January, 2015, so some wording in the 2014 regional document is no longer current with the respect to the final directives.] The regional document also pointed out that the draft directives did “not require SCC designation for any species” (which is still the case in the final directives). The regional guidance said the forest *must* consider species with a NatureServe rank of G1/N1 or G2/N2 and *may* consider the following species: G3 and S1/2 species (among other *must* and *may* criteria). [NOTE: the final wording in 12.52 is that species ranked G/T1 and G/T2 *must* be considered, and G/T3 and S1 or S2 species *should* be considered.]

The official electronic project record also includes the document that explains the NatureServe criteria for determining species ranking (Faber-Langendoen, D., J. Nichols, L. Master, K. Snow, A. Tomaino, R. Bittman, G. Hammerson, B. Heidel, L. Ramsay, A. Teucher, and B. Young. 2012. NatureServe Conservation Status Assessments: Methodology for Assigning Ranks. NatureServe, Arlington, VA.). There are several additional documents in this electronic project record such as field notes of species occurrence, field survey reports, email discussions, meeting notes, and spreadsheets containing comments and rationale notes and literature citations for potential SCC. This additional documentation provides insights into how the SCC identification process was conducted but it does not appear that any of it was readily available to the public.

REVIEW FINDINGS: SCC LIST CRITERIA AND COMPOSITION

Exclusion based on NatureServe rankings

The objector is concerned that species with a NatureServe rank of S3 that were considered, were not identified as SCC in the final list because of their S3 ranks. They contend that because S3 indicates that the species is “vulnerable” at the state scale, this indicates substantial concern for persistence, and the S3 species should be identified as SCC. The FM SCC matrix, also used by the Regional Forester to determine the final SCC list, does indicate that there is a set of species that have NatureServe ranks of S3 that were considered, but not identified as potential SCC or final SCC seemingly because of their S3 rank.

Rationale for why the wood thrush (G5/S3), star-nosed mole (G5/S3), eastern woodrat (S3), northern pine snake (G4/S3S4), and *Sageretia minutiflora* (G4/S3) were not identified as SCC on the FM SCC matrix includes “rank does not meet rarity for inclusion” or “does not meet listing criteria for G/S ranks.” There did not appear to be additional information in the matrix regarding the occurrence and substantial concern criteria described at FSH 1909.12, 12.52c, and required at FSH 1909.12, 12.52b. The rationale given in the SCC matrix for why the species was not listed as a SCC is limited. This was discussed with regional staff and they began to pull together documentation found in the electronic project record to provide context for what was in the matrix. It was recognized that even with the additional available information, more effort was needed to properly support the conclusions in the matrix. The region worked with the forest to gather additional documentation of best available science and rationale. Some examples of this work were shared and discussed at the resolution meeting.

The objector is also concerned that some species with NatureServe rounded ranks of G1, G2, G3, S1, or S2 that were considered were not identified as SCC because of their ranks. They contend that there is a concern for the persistence of this set of species because NatureServe has identified them as having rounded ranks of G1 (globally critically imperiled), G2 (globally imperiled), G3 (globally vulnerable), S1 (critically imperiled at the state scale), or S2 (imperiled at the state scale). The FM SCC matrix does indicate that there is a set of species that have NatureServe rounded ranks of G1, G2, G3, S1, or S2 that were considered, but not identified as potential SCC or final SCC seemingly because of their NatureServe rank. Rationale for why the Florida green water snake (G5/S2), *Amphicarpum muehlenbergianum* (G4/S2S3), *Cayaponia quinqueloba* (G4/S1?), *Eleocharis tricostata* (G4/S2?), *Iris tridentata* (G3G4/SNR), and *Rhynchospora inundata* (G4?/S2?) were not identified as SCC on the FM SCC matrix includes “does not meet the criteria for G rank” or “does not meet the listing criteria for S rank.” There does not, however, appear to be additional rationale regarding the occurrence and substantial concern of these species that would indicate why the species were not identified as SCC in the FM SCC Matrix. As discussed above, efforts are underway to address this and will be formalized through the instruction.

Exclusion based on Substantial Concern about Persistence Criteria

The objector is concerned that “conclusory statements were made to exclude [8 plant species] because ‘substantial concern for persistence not demonstrated through threats or population decline.’” The FM SCC matrix does indicate that there is a set of species that were considered based on their NatureServe ranks, but their habitats or populations were deemed to be stable or abundant by the forest and therefore not designated as potential SCC. Rationale for why *Agrimonia incisa* (G3/S2), *Litsea aestivalis* (G3/S3), *Peltandra sagittifolia* (G3G4/S2), *Pieris phillyreifolia* (G3/S1), *Plantago sparsiflora* (G3/S2), *Rhexia aristosa* (G3/S3), *Rhynchospora tracyi* (G4/S3), *Tridens carolinianus* (G3G4/S1), and *Xyris elliottii* (G4/S1) were not identified as SCC included statements such as “Habitat is abundant and stable” or “Habitat stable, populations extensive” or “Population numbers appear to be stable” but the information, including BASI listed to support these conclusions is not obvious. Other information found in the record may support a concern for these species’ persistence. A table from the Francis Marion National Forest Draft Forest Plan Assessment, December 2013 (Appendix A. Plants of Potential Conservation Concern on the Francis Marion NF, Global, State, Number of Forest EOR’s or revisits, and Unit Rank) identifies 16 or fewer occurrences for 7 of these species on the forest, and because of these low numbers, the table indicates that for most of these species, they are assigned unit ranks of critically imperiled or imperiled or vulnerable on the Francis Marion. In addition, the FM SCC Matrix itself

indicates the number of observations on the forest represent a considerable portion of the statewide observations. Even if populations have previously been stable at these low numbers, clear citation of supporting BASI was lacking in the FEIS. Additional information, including BASI from the project record, was shared at the objection resolution meeting.

Exclusion based on Occurrence Criteria

The objector is concerned about “species previously found in the plan area, but not seen for some period of time,” and contend that exclusion of these species as SCC “should rarely occur, and only based on best available science that reasonably demonstrates that a return to the plan area is unlikely.” The directives state that one criterion to be a SCC is that the species must be known to occur in the plan area (FSH 1909.12, Ch. 10, 12.52 c (1)). Its reasonable then, if the species was known to occur in the past, but new information, including BASI as determined by the Regional Forester, indicates it is *no longer present* in the plan area, it should not be a SCC. Also, if a species has not been recently verified as still existing (extant) in the plan area the Regional Forester may still determine the species is known to occur in the plan area. For example, if the Agency has an historical record of occurrence and the characteristics of the species are such that the species should still be present, and ecological conditions in which the species lived at the time for which there is an historic record has not materially degraded, then the Regional Forester could determine that the species occurs in the plan area.

It seems as though the rationale for not including blackbanded sunfish, *Asplenium heteroresiliens*, *Carex chapmanii*, and *Carex decomposita* on the potential SCC list after they had been considered, was that the last known occurrence in the plan area was too long ago, but there is no clear citation of BASI in the FEIS that indicates the species no longer occur on the plan area. At the objection resolution meeting, the region provided additional information that offers rationale for this conclusion.

Interpretation of Occurrence Criteria

The objector is concerned that the phrase *becoming established* “should be interpreted in the context of the planning rule, which recognizes that climate change is leading to changes in many species’ ranges.” The planning directives for identifying SCC already provide guidance for species whose ranges may be changing. The directives provide that “if the range of a species is changing so that what is becoming its ‘normal’ range includes the plan area, an individual occurrence should not be considered transient or accidental” (FSH 1909.12, ch. 10, 12.52c). Therefore, if a species’ range is changing so that what is becoming the species’ ‘normal’ range includes the plan area – as may be the case with changes in species’ ranges due to climate change – and there is a documented occurrence, the species should be considered to be “known to occur” in the plan area.

The objector is also advocating that the phrase *becoming established* is “interpreted in a manner that would help meet the requirement to contribute to recovery of species by facilitating reoccupation of historic habitats.” The planning rule requires that the plan include plan components that provide the ecological conditions necessary to contribute to the recovery of federally listed threatened and endangered species (36 CFR 219.9(b)(1)), but the rule and directives do not establish any obligation to recover species that are not threatened or endangered.

The objector suggests that to be consistent with the projected plan period of fifteen years, that if “best available science indicates that a species may occur in the plan area within fifteen years, it would qualify as an SCC”. This interpretation is not consistent with the rule’s definition of SCC. The planning directives provide that to be identified as a potential species of conservation concern a species must be “native to, and known to occur in the plan area” (FSH 1909.12, Ch. 10, 12.52c(1)). The directives further describe that, “a species is known to occur in the plan area if, *at the time of plan development* [emphasis added], the best available scientific information indicates the species is established, or is becoming established, within the plan area” (FSH 1909.12, Ch. 10, 12.52c(1)). Therefore if best available science indicates that a species may occur in the plan area within fifteen years – but not it is not currently present – it would not qualify as an SCC. If, after the plan is final, new information is found that may indicate a new species is becoming established in the plan area, this information must be considered by the Forest Supervisor and may result in the species being added to the list (FSH 1909.12, Ch. 20, 21.22b).

Red Wolf not included as a SCC

The red wolf is listed as endangered under the Endangered Species Act (ESA) of 1973. The definition of a species of conservation concern indicates that a SCC “is a species, other than federally recognized threatened, endangered, proposed, or candidate species.” In addition, a SCC must be “known to occur in the plan area,” and because red wolf does not occur it should not be listed as a potential SCC.

To comply with the requirements of the Endangered Species Act of 1973 (ESA), a programmatic Biological Assessment (BA) was prepared to assess the effects of implementing the management activities proposed in the revised Forest Plan on federally listed threatened and endangered species, and critical habitat, which occur or may occur within the plan area.

As part of Endangered Species Act Section 7(a) (2) consultation US Fish and Wildlife Service (FWS) provided a list of ESA-listed species known or likely to occur on the Francis Marion National Forest. Red wolf was not identified as known or likely to occur and therefore did not warrant consideration in the BA. According to the 1992 Red Wolf Recovery Plan, the US Fish and Wildlife did not consider the Francis Marion NF as a possible location for recovering the wolves. Red wolves were placed on Bull’s Island near the Francis Marion in 1978, but these wolves were removed in 2005 and relocated to northeastern North Carolina. Though some wolves remain in a fenced enclosure at the Sewee Visitor Center, free-ranging wolves are not ‘nearby’ as objector contends.

While the Forest Service recognizes the conservation issues surrounding the species, red wolves are not present on the Francis Marion NF, there are no plans to reintroduce them to the forest, and they are unlikely to recolonize the forest on their own. The forest plan did not address effects to red wolves, or consider potential management for the species, or consider them as a SCC.

Documentation of BASI

The objector is concerned that the SCC matrix “describes conclusions for the criteria for SCC, but it in many cases provides little or no support or citations.” Also, the objector contends that the information provided in the SCC Matrix does not meet the requirements at 36 CFR 219.3 for some species: “Identify what information was determined to be the best available scientific information, explain the basis for that determination, and explain how the information was applied to the issues considered.”

The SCC Matrix includes summarized rationale for why a species either stayed on the lists or were removed from the lists as the forest developed its species considered list, then potential SCC list, then SCC list. The FM SCC Matrix, however, does not include complete documentation of BASI. Often, very short conclusory remarks were made as to the rationale for identifying or not identifying a species as potential SCC or final SCC, but there were very few uses of citations to indicate how BASI was being applied to determination of potential SCC or final SCC in the FM SCC Matrix. In addition, there is little or no explanation of the basis for determination that the scientific information used is BASI, nor how BASI was used to inform the development of the list of SCC in the project record.

REVIEW FINDINGS: SCC LIST PROCESS

Public Comment

The objector takes issue with opportunities for public comment when they state: “it does not appear that the public (other than Defenders) had an opportunity to review the SCCs initially identified by the regional forester.” The Forest Supervisor identified a list of potential SCCs that was addressed in the draft Assessment (December 2013) and posted on the Forest web site. The Regional Forester identified 68 species in his June 18, 2015 memorandum and this draft SCC list was used for the DEIS. The public had an opportunity to comment during the ninety day comment period for the DEIS. After additional coordination with the forest staff, the Regional Forester modified the list on August 11, 2016. The Regional Forester’s staff and the Forest Supervisor’s staff appropriately coordinated and considered the public comments (See response to public comments FEIS Appendix H).

April 12, 2016 comment from Defenders of Wildlife

The objector states the response to comments in the FEIS did not address their comments of April 12, 2016. Neither the Regional Forester nor the Forest Supervisor responded to the objectors’ letter of April 12, 2016. The Responsible Official is not obligated to respond to this letter as it was submitted outside a designated opportunity for comment, however, he should consider the content in the analysis and ideally discuss with the objector.

Risk to a species within the plan area versus the broader context.

The objector takes issue with the Regional Forester finding that there is NOT substantial concern for persistence in the plan area when South Carolina Natural Heritage Program or other entities has said a species is at-risk because of broader scale concerns (Defenders of Wildlife references 1909.12 FSH 12.52d(3)(f) vs. (a-e)).

Conservation status ranks are one element of scientific information, but they may reflect population dynamics from outside the planning unit. As a result, a species with global or state-wide conservation concerns may not necessarily be at-risk within the planning unit.

If a species is determined to be at risk across its range, but is determined to be secure within the plan area, it does not fit the definition of SCC. The definition of SCC describes the context for identifying SCC as the plan area (36 CFR 219.9(c)). SCC must occur in the plan area and the best available scientific

information must indicate substantial concern about the species' capability to persist in the plan area. (36 CFR 219.9(c); FSH 1909.12, ch. 20, sec. 12.52(c)). See June 6, 2016 file code 1920 memorandum to Regional Foresters, from Leslie A. C. Weldon about "Clarification of Implementation of the 2012 Planning Rule, Directives, and Species of Conservation Concern."

The process used to determine SCC within the plan area, by the Regional Forester, is appropriate and there is additional information in the planning record that may be useful to cite when discussing the rationale for identifying SCC, such as those documents listed in the table "20161108 Excluded SCC FM Reply Updated RM." This information was not easily accessible to the public and should be brought forward more apparently in the record.

Delegating SCC Authority to the Forest

The objector is concerned that the process used, as indicated by regional guidance to the Forest Supervisor appears to delegate SCC authority to individual forests to a degree not allowed by the planning rule and handbook (1909.12 FSH 21.22a(1)(2)(b)). There are references in the regional guidance to a forest-level "designation" process. The objector notes that the "final forest submission date" occurred well after the DEIS and its public comment period, so it does not appear that the public (other than Defenders) had an opportunity to review the SCCs initially identified by the Regional Forester. They also observe that of the 144 species considered, only three initial Forest determinations were changed by the Regional Forester, and two of those were the result of NatureServe changes.

The objector does not take issue with the Forest being most knowledgeable about the status of species in the plan area, and that their assessment should be given appropriate weight. However, the planning rule recognizes that risk to a species on a particular forest must be considered in a broader context that the Regional Forester must provide.

The regional guidance dated August, 2014 is labeled "Choosing Species of Conservation Concern" and was informal guidance drafted by Duke Rankin, the Southern Region Threatened and Endangered Species Program Manager. The document is referred to as a white paper in the Appendix E of the FEIS. Mr. Rankin updated the white paper in May 2016 based in part on the objector's April 12, 2016 comments. However, the modifications of the document did not greatly alter the consideration process. A review of this guidance shows that the Regional Forester did not delegate the authority to identify SCC to individual Forest Supervisors, as the objector contends. The paper acknowledges that SCC are designated by the Regional Forester and discusses the forest developing the initial list of proposed SCC for input into the Regional Forester's determination. The latest SCC identification was done by Regional Forester memorandum of August 11, 2016.

SUMMARY OF REVIEW FINDINGS WITH CONCLUSION AND ASSOCIATED INSTRUCTION

Exclusion based on NatureServe rankings

The rationale given in the SCC matrix for why wood thrush (G5/S3), star-nosed mole (G5/S3), eastern woodrat (S3), northern pine snake (G4/S3S4), and *Sageretia minutiflora* (G4/S3) was not listed as a SCC needs to be enhanced. There did not appear to be clear rationale regarding the occurrence and

substantial concern of Florida green water snake (G5/S2), *Amphicarpum muehlenbergianum* (G4/S2S3), *Cayaponia quinqueloba* (G4/S1?), *Eleocharis tricostata* (G4/S2?), *Iris tridentata* (G3G4/SNR), and *Rhynchospora inundata* (G4/S2?) that would indicate why the species were not identified as SCC in the FM SCC Matrix.

Exclusion based on Substantial Concern about Persistence Criteria

The rationale for not identifying *Agrimonia incisa* (G3/S2), *Litsea aestivalis* (G3/S3), *Peltandra sagittifolia* (G3G4/S2), *Pieris phillyreifolia* (G3/S1), *Plantago sparsiflora* (G3/S2), *Rhexia aristosa* (G3/S3), *Rhynchospora tracyi* (G4/S3), *Tridens carolinianus* (G3G4/S1), and *Xyris elliottii* (G4/S1) as SCC in the FM SCC Matrix was very brief and not linked to supporting BASI, and other information found in the record may support a concern for the species' persistence. The rationale given in the matrix for why the species was not listed as a SCC needs to be enhanced.

Exclusion based on Occurrence Criteria

The rationale for not including blackbanded sunfish, *Asplenium heteroresiliens*, *Carex chapmanii*, and *Carex decomposita* on the potential SCC list after they had been considered, was that the last known occurrence in the plan area was too long ago, but there is no BASI cited that indicates the species no longer occur on the plan area.

Best Available Scientific Information documentation

The FM SCC Matrix that informs the final SCC list does not include complete documentation of BASI. Often, very short conclusory remarks were made as to the rationale for identifying or not identifying a species as potential SCC or final SCC. There was limited use of citations to indicate how BASI was being applied to determination of potential SCC or final SCC in the FM SCC Matrix. In addition, explanation of the basis for the determination that the scientific information used is BASI and how BASI was used to inform the development of the SCC list was difficult to locate in the project record.

Conclusion

The iterative nature of the Francis Marion SCC identification was influenced by the level of guidance and direction available at each point in the process. The Regional Forester is responsible for verifying and documenting the rationale and best available science to inform the SCC list and addressing any gaps or additional information needed. This objection has highlighted that not all the information used by the Regional Forester was readily available to the public and, in some cases, additional documentation of best available science and rationale is needed.

Instruction

The Responsible Official will re-evaluate the 25 species identified in the objection, using the process found in 36 CFR 1909.12_21.22b, as expeditiously as possible following the signing of the Record of Decision for the Francis Marion Revised Land Management Plan.