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July 7, 2009

Pemigewasset Ranger District
ATTN: John Marunowski
1171 NH Rte. 175
Holderness, NH 03245

Dear Mr. Marunowski:

Wilderness Watch is providing these comments on the proposal to remove the suspension bridge over the East Branch of the Pemigewasset River in the Pemigewasset Wilderness. Our comments are based on our review of the scoping notice, Minimum Requirements Decision Guide, and our decades of interest and involvement in wilderness stewardship issues throughout the country.

Wilderness Watch concurs with the Forest Service's proposed action to remove the suspension bridge, close a short stretch of trail, and remove the steel I-beam bridge over Black Brook, all using non-motorized equipment and stock animals. White Mountain National Forest personnel deserve a good deal of praise for proposing this action to preserve and enhance the wilderness character of the area. The proposal meets both the letter and spirit of the Wilderness Act.

Statute, Regulation, and Policy

The proposed action meets the statutory requirements of the Wilderness Act to preserve the area's wilderness character:

...each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Wilderness Act section 4(b).

Thus, while the Forest Service administers the area for recreational, educational, or other purposes, it must do so in a way that preserves wilderness character. Removing the bridge meets this test.

Similarly, the Wilderness Act prohibits structures that are not necessary to meet minimum requirements to preserve the area's wilderness character (Sec. 4(c)). As the MRDG correctly notes, the bridge is not necessary to preserve the area's wilderness character, thus it is a non-conforming structure that can not be maintained. Though the Pemigewasset Wilderness may contain numerous non-conforming structures that predate Wilderness designation, the law prohibits construction or maintenance of such structures after designation.

Wilderness Watch recognizes that rebuilding the structure would facilitate certain recreational uses in the area including cross-country skiing for those who use the bridge as part of a loop trip. The test for whether a structure is necessary is whether it is the minimum required for administration for the purpose of the Act. The purpose of the Act is to preserve the area's wilderness character, not to facilitate any of the various uses to which the area might be put. As the Wilderness Act's chief author and advocate clearly noted:

“The purpose of the Wilderness Act is to preserve the wilderness character of the areas to be included in the wilderness system, not to establish any particular use.”

—Hearing before the Committee on Insular and Interior and Insular Affairs, House of Representatives. 1962.

The challenge is to allow appropriate uses, such as hiking or cross-country skiing, to occur in a manner that does not impair wilderness character. The proposed action meets this challenge.

Department of Agriculture regulations are more explicit in calling for the bridge's removal in that they call for restoring the area's wilderness character.

National Forest Wilderness resources shall be managed to promote, perpetuate, and, where necessary, *restore* the wilderness character of the land...” 36 CFR 293.2 (Italics added).

Forest Service policy also argues strongly for implementing the proposed action. Forest Service Manual 2320.6 – The Wilderness Management Model and the Wilderness Act, includes the following direction:

Each designated wilderness is affected by a variety of human influences that vary in intensity. In one area, human influence may be very limited; in another area, major disturbances occur. The number and intensity of these influences cause a gap between the attainable legislative wilderness and the conditions that exist on a wilderness ("X"). The goal of wilderness management is to identify these influences, define their causes, remedy them, and close the gap ("A") between the attainable level of purity and the level that exists on each wilderness ("X").

Where a choice must be made between wilderness values and visitor or any other activity, preserving the wilderness resource is the overriding value. Economy, convenience, commercial value, and comfort are not standards of management or use of wilderness. Because uses and values on each area vary, management and administration must be tailored to each area. Even so, all wilderness areas are part of one National

Wilderness Preservation System and their management must be consistent with the Wilderness Act and their establishing legislation.

The proposal to remove the bridges using non-motorized equipment is the only option fully consistent with the statute, Dept. of Agriculture regulations, and Forest Service policy.

Alternatives

The MRDG discusses several alternatives to the proposed action. None of the alternatives except Alt. 3 (proposed action) are consistent with law, policy, or the agency's obligations for Wilderness or visitor safety.

Alternative 1, no action, would have some impact on the area's existing wilderness character because it requires additional structures (fencing and signing). Though justified for safety reasons, given that options exist to remove the unsafe structure an alternative that results in more structures is contrary to law and policy on wilderness stewardship. Leaving an unsafe structure in place puts the public at an unnecessary risk for liability.

Alternative 2, repair the bridge, is clearly contrary to the law. As noted previously, any structure built or maintained in Wilderness must be necessary to preserve the area's wilderness character. The MRDG makes it clear this structure does not meet that test. The case law is settled on this matter. For example, in a case involving the Emigrant Wilderness, the Forest Service opted to rebuild and maintain several small dams on the basis the dams provided among other things recreational, conservation, and historical values. The court shot down that reasoning finding that the Act seeks to preserve the wilderness character of the land, not promote a particular use:

While fishing is an activity that is common among visitors to wilderness areas, neither fishing nor any other particular activity is endorsed by the Wilderness Act, nor is the enhancement of any particular recreational potential a necessary duty of wilderness area management....

The wilderness that the Act seeks to preserve is not defined by reference to any particular recreational opportunity or potential utility, but rather by reference to the land's status or condition as being "Federal land retaining its primeval character and influence, without permanent improvements or human habitation [. . .]" § 1131(c).

The area manifested its wilderness characteristics before the dams were in place and would lose nothing in the way of wilderness values were the dams not present. What would be lost is some enhancement of a particular use of the area (fishing), but that use, while perhaps popular, is not an integral part of the wilderness nature of that area. High Sierra Hikers Association v. USFS

In a similar case involving the Olympic Wilderness in Olympic National Park, the court overturned a National Park Service decision to reconstruct two trailside shelters used by recreationists. The court found that restoring or replacing non-conforming structures that were not the minimum necessary to preserve the Wilderness is contrary to the Act:

The Home Sweet Home and Low Divide shelters have collapsed under the natural effects of weather and time, and to reconstruct the shelters and place the replicas on the sites of the original shelters by means of a helicopter is in direct contradiction of the mandate to preserve the wilderness character of the Olympic Wilderness. Olympic Park Associates v. Mainella

Though removing the bridge will inconvenience some recreationists who prefer to use it as part of their recreation activity, a decision to maintain the bridge will run afoul of the law.

Alternative 4, remove the bridge with motorized equipment, runs counter to law and policy because as the MRDG makes clear the project can be completed without motorized equipment. Moreover, while there are tradeoffs between extended packstock trips on the trail and a helicopter to sling load materials to and from the site, pack stock are compatible with wilderness values and character and helicopters are not.

Summary

Wilderness Watch supports and applauds the Forest Service's proposal to remove the unsafe and unnecessary bridges in the Pemigewasset Wilderness. We appreciate that this decision will disappoint some users of the area, but it is the right course of action. We also appreciate the tone of the scoping report with its positive and proactive message explaining why this is the appropriate course of action in Wilderness. We encourage the Forest Service to continue its efforts in this regard.

Please contact our office should you have any questions regarding these comments.

Sincerely,

George Nickas
Executive Director