

entrusts the ownership of, and jurisdiction over, all wildlife to the State of Georgia, with those wildlife resources to be “managed in accordance with sound principles of wildlife management, using all appropriate tools, including hunting, fishing, and the taking of wildlife.”

Floating recreation, including kayaking, canoeing, rowing, rafting, and paddling, are hallmarks of Georgia’s outdoor culture. Adventures, memories, and livelihoods are created along Georgia’s major rivers and tributaries, with ample testimony at the study committee meetings attesting to that fact. Individual boaters told stories of their families rafting down rivers for generations. River guides testified to the out-of-state visitors to Georgia who take advantage of the state’s waterways for outdoor adventures. Paddling groups and canoe associations attested to the tremendous economic impact of outdoor watersports, namely hundreds of billions in economic activity, dozens upon dozens of small businesses, burgeoning equipment manufacturers, and numerous careers fostered out on the rivers. Economic development projects are being undertaken to cultivate floating recreation, such as whitewater rafting in Columbus along the Chattahoochee River. In short, outdoor recreation on Georgia’s waterways has had a tremendous economic, cultural, and social impact for the state.

Navigability and Rights of Landowners

Determining Navigability

Navigability is a key factor when determining the public’s right to access particular waters and the rights of adjoining landowners. O.C.G.A. §44-8-5(a) defines a non-tidal “navigable stream” as one “capable of transporting boats loaded with freight in the regular course of trade either for the whole or a part of the year,” noting “[t]he mere rafting of timber or the transporting of wood in small boats shall not make a stream navigable.”⁵ This definition dates back to 1863.

To determine navigability, and thus the public’s right to access particular streams, the Georgia Department of Natural Resources has relied on a variety of sources and factors: state and federal law; court cases; Georgia Attorney General opinions; research and historical documents on traditional use; presence of state-owned boat ramps; and stream characteristics such as stream width and flow rate (measured in cubic feet per second or “CFS”).⁶ While the U.S. Army Corps of Engineers maintains a “Major Navigable Rivers” list based on its application of federal law for waterways within its jurisdiction, the Georgia Department of Natural Resources does not maintain a similar list of Georgia waters based on its application of state law.

The committee heard testimony from fishermen and paddlers seeking clarity on whether local streams are navigable or non-navigable to know where they are permitted to go onto particular

⁵ Compared with the federal definition of “navigable waters” as set forth in relevant part in 33 C.F.R. §329.4: “those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

⁶ DNR built and currently maintains 259 boat ramps and access areas across the state, and they hold that streams with state-owned boat ramps are open for public use.