



Office of Mayor Mark S. Nexsen
2330 McCulloch Boulevard North
Lake Havasu City, AZ 86403

May 25, 2016

U.S. Fish and Wildlife Service
Havasus National Wildlife Refuge
Attn: Draft Recreational Boating CD
317 Mesquite Avenue
Needles, CA 92363

**Re: Comments on Havasus National Wildlife Refuge Draft Recreational Boating
Compatibility Determination**

The lands and resources owned by the public and managed as the Havasus National Wildlife Refuge are important and the activities supported by this Refuge are integral to the regional economy. The proposed restrictions to the Havasus National Wildlife Refuge contemplated by the U.S. Fish and Wildlife Service will detrimentally affect recreational boating on Lake Havasu and the citizens of and visitors to Lake Havasu City.

To date, the public has received no documentation to justify these additional restrictions on recreational boating within the Refuge. The processes utilized by the U.S. Fish and Wildlife Service have attempted to curtail public involvement and transparency. While Lake Havasu City prefers the compatibility determination process be suspended, it appreciates the thirty-day extension to the public comment period and, at the very least, the City renews its request for a sixty-day extension as it is warranted for this controversial matter and is necessary in order to provide sufficient opportunity for public input, education, and involvement. It also provides additional time for the U.S. Fish and Wildlife Service to answer previous questions submitted by Lake Havasu City.

1. The Service's draft recreational boating Compatibility Determination ("CD") is unclear and creates confusion as to what restrictions are being proposed.

Overall, the CD is unclear as to which activities are currently restricted and where, and what the proposed restrictions are and where. The maps provided to date are unclear, conflicting, and difficult to compare with the written descriptions in the CD.

All maps fail to show any of the current closures in proximity to the Havasus National Wildlife Refuge ("NWR" or "Refuge"). The map included in the CD shows the Refuge boundary as extending south of Catfish Bay to River Mile 215 but does not show the California side of the River. On careful examination, the Service restrictions in this area occur only on the Arizona side of the River, but the CD text gives no explanation why the California side of the River is not included.

The Refuge as shown on the map is too small in scale to actually show areas of restriction. The map and vague references to buoys are inadequate and will be confusing to the public. The map posted on April 29, 2016, does not show the proposed restrictions north and outside of Topock Marsh as shown on the map contained in the CD. A thorough process and collaboration with other agencies and adjacent landowners would have avoided this confusion.

Implementing restrictions on one side but not the other of the Colorado River in some areas creates additional questions such as how will these restrictions be enforced if there is no clear line where the restrictions end in the middle of the River? Will the Service place additional buoys that create additional boating hazards and maintenance issues?

Further, the CD encompasses popular fishing destinations. It is not clear how the proposed thirty horsepower restriction in addition to the no-wake restrictions in Topock Marsh will impact individuals desiring to fish in this area.

These and other vague references and unsupported conclusions do not support the proposed action. Going forward with this proposal without clarifying these impacts and the scope of the action renders it arbitrary, capricious and an abuse of discretion.

2. The Service's proposed actions should be done in accordance with the National Environmental Policy Act ("NEPA").

The U.S. Fish & Wildlife Service (the "Service") failed to comply with NEPA for its Determination for Recreational Boating in the NWR.

Attachment A of the CD, Page 10, states that "Due to the absence of controversy related to environmental impacts, the National Environmental Policy Act (NEPA) compliance for the modification of the restricted boating area was completed through a categorical exclusion, as provided for by 516 DM Chapter 8 [8.5.(A).2 ... public safety efforts ... which do not involve new construction or major additions to existing facilities]." This recounting of last year's half-mile extension of boating restrictions implies that the current Refuge-wide proposal could be handled the same way. Nothing could be further from the truth.

The Department of the Interior's Department Manual ("DM"), 516 DM Chapter 8.5, provides that categorical exclusions cannot be used if exceptions to categorical exclusions apply. If any one of these extraordinary circumstances applies, it necessitates completion of an Environmental Assessment ("EA") or an Environmental Impact Statement ("EIS").

Listed below are such extraordinary circumstances applicable here. The Service's proposed actions relating to the NWR:

- Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation on refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.
- Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [National Environmental Policy Act Section 102(2)(E)].
- Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.
- Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
- Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.
- Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).

Lake Havasu is "the most utilized boating lake in Arizona" (CD, Page 2). Additional boating restrictions in this area are highly controversial and have the potential to affect 2 to 3 million people annually. The controversy alone of this action quite clearly does not allow the categorical exclusion to be applied.

Further, potentially significant environmental effects from these proposed actions include impacts to recreation (including cumulative impacts), socioeconomic impacts to Lake Havasu City and the Chemehuevi Tribe, land ownership issues, and environmental justice. These proposed actions would also establish a precedent for future arbitrary actions by the Service, which, in the continued absence of supporting science, would compound significant environmental impacts.

The proposed actions cumulatively impact recreational users of the Colorado River. Previous actions that already restrict recreational uses of this portion of the Colorado River are numerous. Further, adverse effects on low income or minority populations in the area have not been considered and are not discussed at all.

In sum, the proposed action is a major federal action under NEPA and requires an EIS.

3. The Service failed to observe Environmental Justice requirements.

The Service failed to comply with Executive Order #12898 on Environmental Justice. Federal agencies are required to address the impacts of federal actions on minority or low-income populations, such as the Chemehuevi Indian Tribe, which is the adjacent landowner and therefore likely to be significantly affected. This failure is amplified by reference to the recently released draft Department of Interior Environmental Justice Strategic Plan 2016-2020.

4. The Service failed to coordinate with other agencies and adjacent landowners.

In the spirit of partnering, eleven agencies with jurisdiction on Lake Havasu, including the US Bureau of Reclamation, the US Bureau of Land Management, the US Army Corps of Engineers, the US Coast Guard, Arizona State Parks, Chemehuevi Indian Tribe, Arizona Game & Fish Department, California Department of Fish & Wildlife, San Bernardino County Sheriff's Department, Lake Havasu City, and the Service, made a landmark effort to coordinate their actions in good faith on lake regulation due to the complex environmental, regulatory, and recreational uses of the lake. Nevertheless, the Service failed in its promise to coordinate, or even notify, any of these cooperating agencies or adjacent landowners prior to proposing these new restrictions on boating recreation.

5. The Service's claims of public safety efforts as basis for restrictions are misleading and unsupported.

Public safety statements provided in the CD are incorrect. The CD was issued under the Department regulations of "public safety efforts." However, what little information provided on water safety is inaccurate. The Service states, "...waterskiing boats should allow a safety area of at least 100 feet on either side of their boat" and cites Bostian (2005) as the source. This source actually states, "All boats should allow a minimum 100 foot ski area. Meaning, if two ski boats are in the same vicinity of each other they should be 200 feet apart." The Service misconstrued this statement to mean that 100 feet should be provided on either side of the boat, which is wrong. If these regulations are a public safety effort, at least the safety information should be accurate and not invented.

The Service cites "previous monitoring" of non-motorized boaters finding that powerboats are obtrusive and disruptive to their experience. While the reader is led to believe that this previous monitoring is pertinent and from the Colorado River, the source is actually from a Master's Thesis of a graduate student from the University of Idaho on the Salmon River in Idaho from 2002. This evidence is over 15 years old and any relevance appears to be a reach.

Indeed, the CD is rife with speculation and only two of the listed resources even relate to the Colorado River. One is ten (10) years old and does not support the proposed restrictions, and the other is twenty-two (22) years old and woefully out of date.

6. The Service failed to consider cumulative impacts of their actions on recreational boating.

The Service mentions that recreational boating is a historic use prior to the establishment of the Refuge. The first regulations restricting waterskiing in key areas of the Refuge were in the late 1970s. The Refuge implemented no-wake regulations in the backwaters in 1987. A prohibition of personal watercraft in the backwater areas was implemented in 1992. These incremental restrictions on recreational uses of this area have led to a significant adverse cumulative impact to recreational boating on the Refuge, which has not been addressed as required by NEPA.

The Service cites a direct impact to only 3.6 percent of the total acres available for waterskiing, wakeboarding, and tubing by claiming that all 19,300 acres are available for these activities. The Service does not take into account impacts to these activities from past restrictions, as a cumulative impact assessment should. Nor does it consider the fact that existing no-wake zones, such as those in Thompson Bay, Copper Canyon, Steamboat Cove, and other coves along some shorelines are already restricted from waterskiing and other activities by other agencies. Considering the currently restricted areas, including within the Refuge, are likely greater than 10 percent of Lake Havasu, the cumulative impact of restrictions on an additional 700 acres of high-quality waterski areas is significant to the recreating public.

The Service further does not consider the quality of the available remaining areas that are open to waterskiing. Open lake areas are typically choppy, less safe, and lower quality waterski areas as compared to calm, safe areas near the shoreline with interesting vistas, making the Service's analysis of the entire lake not relevant. The poorly prepared impact analysis appears severely biased in its finding of beneficial cumulative impacts due to awareness of conservation, which is simply speculation.

The Service provides general information regarding the impacts of high-speed boats to wildlife, including endangered species. However, the majority of these wildlife and listed species also occur in the Cibola and Imperial NWRs, where waterskiing and boating is allowed in certain areas. Is the Service stating that waterskiing is not compatible to wildlife in the Havasu NWR, but is compatible in the Cibola and Imperial NWR?

The Service appears to be justifying an action after-the-fact with a hastily prepared document, rather than considering the impacts from this proposed action in advance in accordance with federal law. For instance, a boating capacity study of Lake Havasu in 1999 is mentioned with no source cited. This is clearly an outdated study and likely irrelevant.

7. The Service failed to respond to essential inquiries posed by Lake Havasu City.

In a letter to Linda Miller, Refuge Manager, dated April 20, 2016, Lake Havasu City posed the following questions, which are outstanding to date and essential to fully comprehending the proposed actions and the potential impacts:

- What is the reason for the permanent expanded closures?
- What objective analysis, data, and statistics do you have to support proposed change?
- What alternatives were considered? Partial, seasonal, or holiday closures?
- If the result of your “decision” forces alleged unsafe boating practices to go elsewhere, what is the safety effect at that new location and how does that serve the public interest?
- What calculations for economic harm to the surrounding communities were considered to balance against your call for “boating safety”?
- If the true cause of the “Compatibility Determination Study” is to provide areas for alternative recreation uses to which power boats are inimical, were other lake areas south of Lake Havasu considered?
- What is your record of consultation?

The proposed regulations regarding the Havasu National Wildlife Refuge are unsupported and the process used to propose these restrictions totally inadequate. Great strides are occurring to bring the numerous jurisdictions responsible for and impacted by Lake Havasu together for the betterment, protection, and enhancement of this precious resource. Lake Havasu City requests that the U.S. Fish and Wildlife Service suspend action on this CD and work cooperatively to protect the lake and all of its users.

Alternatively, because the Service is attempting to adopt regulations without the proper process mandated by federal law, Lake Havasu City strongly objects to the issuance of a CD for the imposition of these proposed regulations as a clear violation of NEPA and the Administrative Procedure Act.

Lake Havasu City requests the Service to adequately and appropriately address the issues outlined in this letter prior to further regulatory action. Lake Havasu City formally requests the Service to immediately return the no-wake area extended in May 2015 to its previous condition unless and until a full implementation of a NEPA process and an EIS is completed demonstrating that further regulations are warranted and necessary.

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Thank you for this opportunity to submit these comments. You may use the address at the top of this letter for all communication on this matter, or you may contact me by phone at 928-453-4152 or e-mail at nexsenm@lhcaz.gov.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Mark S. Nexsen", with a stylized flourish at the end.

Mark S. Nexsen, Mayor
Lake Havasu City, Arizona

Cc: US Senator John McCain
US Senator Jeff Flake
US Congressman Paul Gosar, DDS
USFWS Regional Director Tuggle
USFWS National Director Ashe