



THE STATE OF ARIZONA
GAME AND FISH DEPARTMENT

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May 20, 2016

Dr. Benjamin Tuggle
Regional Director
U.S. Fish and Wildlife Service
Havasu National Wildlife Refuge
Attn: **Draft Recreational Boating CD**
317 Mesquite Avenue
Needles, CA 92363

Re: Comments on Draft Compatibility Determination for Motorized and Non-motorized Recreational Boating on Havasu National Wildlife Refuge

Dear Dr. Tuggle:

The Arizona Game and Fish Department (Department) has reviewed the Draft Compatibility Determination for Motorized and Non-motorized Recreational Boating (CD) on Havasu National Wildlife Refuge (Refuge). Department staff also attended the public meeting held May 2, 2016 in Lake Havasu City. The following comments are provided for your consideration.

Under Titles 5 and 17 of the Arizona Revised Statutes, the Arizona Game and Fish Department (Department), by and through the Arizona Game and Fish Commission (Commission), has jurisdictional authority and public trust responsibilities for management of the state's fish and wildlife resources. It is the mission of the Department to conserve Arizona's diverse fish and wildlife resources and manage for safe, compatible outdoor recreation opportunities for current and future generations.

To further the Department's mission to provide safe recreational boating, our boating safety efforts include enforcement patrol, search and rescue, emergency response and boating education. The Federal Boat Safety Act of 1971, provides for the Sportfish Restoration and Boating Safety Trust Fund that directly supports the Department's recreational boating safety programs. These funds are solely derived from the licensing fees for motorized vessels and the funds are allocated to Arizona from the Sportfish Restoration and Boating Trust Fund. Non-motorized watercraft do not contribute funds to the Department's boating safety program. The funds are allocated based on the number of motorized watercraft registered by the State. A reduction in the number of boat registrations results in a reduction in the funding available for our boating safety efforts.

General Comments

The Department has public trust responsibilities for all species in the State of Arizona, including shared public trust responsibilities with U.S. Fish and Wildlife Service (Service) for species listed under the Migratory Bird Treaty Act of 1918 and the Endangered Species Act of 1973. We recognize the significant value the National Wildlife Refuge System adds to our efforts to conserve wildlife, wildlife habitats and fulfill our public trust responsibilities. The Department's and Service's partnership in conserving wildlife on Refuges in Arizona is a significant factor in the success of the Refuges in Arizona.

Recognizing the value of partnerships and collaborative management, on November 20, 2014, representatives from eleven federal, state, local and tribal agencies, including the Department and the Service, signed an MOU to facilitate collaborative regional administration of Lake Havasu. The Department is disappointed that the Service failed to inform and coordinate with the other signatory agencies in the development of the CD. We believe the input from the other agencies would have resulted in a better CD and less public controversy. The Department requests closer coordination with the Service on this CD, and up front collaboration in future planning and regulatory efforts.

Refuges provide the public significant and varied wildlife-dependent and other outdoor recreational opportunities. The Department believes that with an increasingly urbanized population, it is vital to our agencies' missions to maintain and promote wildlife-dependent and other outdoor recreation. We recognize the need for Refuges to balance outdoor recreation with its primary mission of conserving wildlife. Compatibility Determinations are an important tool in finding and maintaining this balance. The Department supports the Service's efforts to find this balance at Havasu Refuge. However, for the reasons stated below, the Department believes that this CD failed to find that balance.

The CD finds recreational boating to be compatible with refuge purposes, however, through stipulations the CD will increase the restrictions on recreational boating on the waters in the Refuge. Unfortunately, the stipulations are not clearly written and are open to misinterpretation. For example, stipulation number 1 reads as though the entire 17 mile stretch of the Colorado River through the Refuge will be a no wake area. It was stated during the public meeting that this was not the intent. This stipulation could also be interpreted that the Service could further increase the areas of no wake by signing and placing buoys without a CD or other public process. The map provided with the CD is also not clear. The Department could not determine if the area of no motorized boats at Mesquite Bay has been increased. It is also not clear where no wake and towing restrictions apply. It is essential that the stipulations be clearly written and easily understood by the public. The Department requests the Service review and rewrite the stipulations to clarify the intent.

The CD stipulations increase restrictions on popular and traditional boating and related recreational activities (e.g. waterskiing). It is the Department's position that increasing restrictions on traditional public uses requires sound, documented justification. The CD's discussion is of anticipated impacts and uses the words may and potential. Recreational boating has been very popular on the refuge for decades. The CD estimates 2 to 3 million visitors a year

to the Refuge. If the boating were having the anticipated impacts, the impacts should already be well documented. The documentation provided does not document impacts at the refuge. The Department does not believe that the documentation of impacts provided justifies the increased restrictions.

Further, the data available to the Department does not support additional restrictions. Triennial boater use surveys have been conducted by the Arizona Department of Transportation over the last two decades. This data indicates boater use in the area of concern has actually decreased over the last 10 years. In 2000, statistically based boater use data showed 1.75 million boater use days for Lake Havasu and 87,486 use days in Topock Gorge. The most recent Arizona Watercraft Survey (2012) shows a 16% decrease of boater use on Lake Havasu (1.48 M) and a 32% decrease in Topock Gorge (59,364). This survey data also corresponds to economic factors that have been affected by less disposable income, increased gas prices, depressed boat sales and subsequently, decreases in the number of registered vessels nationally. The numbers of watercraft registered in the State of Arizona has steadily decreased from a high of 148,748 in 2000, to a historic low of 124,076 in 2015, greater than a 16% reduction. This data does not support the need for new restrictions. If there are no documented impacts, the Department requests the removal of restrictions.

Additionally, the Department believes the CD's two references to boating density and capacity lack credibility, i.e. page 4 of the CD cites Julie Bostian, a professional photographer and webpage designer as an expert on boat safety. The referenced "study" correlating safe distances between motorboats and non-motorized craft is not a study but actually an about.com article written for waterskiing and noting the recommended distance is relative to two ski boats and the length of an average ski rope of 75 feet. Secondly, another "study" cited on page 5; third paragraph, refers to a 1999 boating capacity estimate of Lake Havasu of 1,250 boats. There is no reference for this study. In 2002, The National Park Service used the 4 to 5 acres per boat in their Lake Mead National Recreation Area Management Plan and Draft and Final Environmental Impact Statements as the maximum recommended boating density. They concluded this estimate was consistent with other urban reservoir capacities including Lake Parris in Southern California, Quail Creek Reservoir in Southern Utah, and Lake Pleasant in Southern Arizona where lake carrying capacities have been evaluated. The Department requests the Service use this more credible evaluation of boat density to ensure a more realistic capacity estimate of 3,860-4,825 boats on Lake Havasu. Other credible estimates of boat densities for Lake Havasu include the BLM's Proposed Lake Havasu Resource Management Plan and Final Environmental Impact Statement (2006) where it was determined 3,628 BAOT (boats at one time) total on Lake Havasu was the best available estimate of summer holiday use.

The Department notes that a Compatibility Determination is not a federal action under the National Environmental Policy Act (NEPA) and does not require compliance with NEPA. However, implementing new or additional restrictions of current uses of the refuge does require compliance with NEPA. Given the turnout and the statements made at the public meeting, the Department believes that this action has met the threshold for public controversy as defined by the Council of Environmental Quality. The potential negative impacts to the local and state economies could also be significant, and should be disclosed and evaluated. Therefore it is the

Department's position that this action requires an Environmental Impact Statement and full analysis of the impacts from this action.

Comments on Specific Stipulations

Stipulation 1. No wake on Refuge waters. As stated previously this stipulation is not clear and open to misinterpretation. The Department opposes a 17 mile no wake zone as this would create an unreasonable burden for recreational and commercial boating attempting to travel upstream against a current often approaching 6 miles per hour where the regulation would limit the speed to 5 miles per hour. We would also oppose the Refuge creating new no wake zones with signs and buoys and without a public process. The Department supports continuing no wake restrictions in backwaters.

Stipulation 2. No waterskiing, tubing, wakeboarding and other recreational-towed devices. This stipulation makes permanent the temporary restriction imposed in May, 2015, extending the restrictions to the southern boundary of the Refuge. This restriction includes a safe, traditional, very popular waterskiing and wakeboarding flat-water area. It is the Department's opinion that the CD does not adequately justify this additional restriction and that impacts to recreation could be significant. The CD indicates safety concerns with the conflict of motorized and non-motorized boating, yet a review of the most recent boating incident reports from the Lake Havasu and Topock Gorge areas do not support that conclusion. Summarizing those reported events; there have been 32 boating incidents reported during the last three years, with four of those incidents occurring within or near the Refuge. Three of those events were groundings and one a swamping. None of the incidences involved non-motorized vessels or personal watercraft. The reported events do not support the existence of a safety concern.

Stipulations 3 and 4. The Department supports stipulation number 4, no wake in Topock marsh. The size, underwater tree stumps and vegetation creates hazards for speed boating. As written, stipulation 3 does not allow boats with engines greater than 30 hp. This restricts large boats, especially bass fishing boats. As written this stipulation restricts a watercraft type independent of the manner of operation which may be viewed as discriminatory in nature. The Department is working to increase angler use of Topock Marsh, boat size restrictions would undermine this effort. If the Service intends to move forward with this stipulation, the Department recommends clarifying language to prohibit the "use" of an engine greater than 30 horsepower to allow larger boats with larger mounted engines to utilize a smaller engine or electric motor while fishing in Topock Marsh.

Stipulation 6 Mesquite Bay motorized watercraft restriction. The CD and map are not clear if this represents the existing prohibition or is an expansion of the existing prohibition. The Department fully supports the fishing docks in Mesquite Bay and the existing motorized watercraft prohibition that enhances the fishing opportunity. The Department does not believe that expanding the prohibition would provide additional benefits to the fishing in Mesquite Bay.

Stipulation 10 Temporary measures. The Department understands the need to be able to enact temporary measures to manage impacts from emergency or unanticipated situations. However, this stipulation does not establish time limits, definitions of impacts or sensitive resources or

thresholds for action. The Department requests the Service define these limits in the stipulation or referencing appropriate Service policy or regulation.

Stipulation 11 Additional restrictions for public safety. The Department boating safety program's primary concern is public safety and we agree with regulations that specifically address public safety issues. However, we do not support creating new restrictions or regulations to target an existing issue without sound and documented justification. Behavioral Research surveys indicate that 71% of the boating public does not believe these areas are overly crowded (non-motorized user groups were not included in this survey). The reported events discussed in stipulation 2 do not indicate a significant user based conflict or a dangerously congested waterway.

The Department recognizes that the popularity of recreational boating on the waters in the Refuge provides an unusual challenge for the management of the Refuge. We also recognize the variety of recreational uses creates conflicts between users. The Department believes that the above-referenced collaborative MOU provides a forum for discussions, input and potential solutions to these challenges. The Department, because of our expertise in fish and wildlife management and outdoor recreation management, can be a valuable partner with the Service to develop solutions to these challenges. The Department requests the Service utilize the multi-partner MOU and the Department's expertise.

The Department does not currently support most of the proposed restrictions as described above, based on a lack of clarity and data justifying these restrictions. The Department supports the Refuge's intent to protect wildlife resources and public safety, but recommends that any regulatory approach should seek to balance competing uses and publics rather than choosing one side in such a socially controversial environment. The Department is unable to suggest a specific balanced approach because of the lack of clarity provided by the CD, the justification, and the intended purpose, and instead suggests the Refuge cease the current regulatory process and start over with a more robust collaborative approach with other agency partners and the public.

Thank you for the opportunity to comment on the CD. If you have any questions or comments please contact Bill Knowles at 928-341-4047 or bknowles@azgfd.gov.

Sincerely



Larry D Voyles
Director