

**House Committee on Natural Resources
1324 Longworth House Office Building
Tuesday, April 19, 2016
10:00am**

Oversight Hearing on

“Recent Changes to Endangered Species Critical Habitat Designation and Implementation.”

Questions from Congressman Paul Gosar to Director Ashe

- 1. Director Ashe, have you studied up on the draft recreational boating Compatibility Determination (CD) for Havasu National Wildlife Refuge announced by the Service April 12th that aims to close significant areas to motorized boating activities on Lake Havasu? Your Deputy Director, Jim Kurth, knew detailed information about this proposal when I questioned him on March 22nd, yet you claimed to know nothing about this pressing matter when I questioned you at the hearing.**

Response: Yes, I have been made aware of the draft recreational boating Compatibility Determination for Havasu National Wildlife Refuge.

- 2. How many new acres will restrict horsepower or prohibit waterskiing, wakeboarding, fishing and other recreational boating if the CD is implemented?**

Response: Fluctuating water levels affect the width of the river and varies throughout the seasons, dam releases, and other environmental factors making it difficult to provide consistent acreage. We are providing the estimated acreages based on January 2015 water levels. Below are the total acres that were proposed motorized boating restrictions in the withdrawn draft CD:

In total approximately 4,500 acres¹ were proposed to have restriction changes.
~4,000 acres (proposed 30hp motor limit and no-wake allowed) in Topock Marsh.
~500 acres were in the proposed ~2-mile expansion of the existing ~17.5-mile regulations. No-wake restrictions were also proposed in this same ~2-mile area.

- 3. Does that figure include all areas within the main channel of the lower Colorado River, in the backwaters of the lower Colorado River, within the 4,000 acre Topock Marsh, within the ½ mile no-wake zone from May 2015, the no-wake restrictions in the Topock Marsh, the horsepower restrictions in the Topock Marsh, and the proposed area from the no-wake zone down to Mesquite Bay?**

¹ Acres refers to acres of water surface from January 2015 and is subject to change throughout the year.

Response: The numbers in the previous response included all areas within Havasu National Wildlife Refuge (Refuge) jurisdiction. No new restrictions were proposed in the existing ~17.5 mile stretch on the main River channel (which includes the ½ mile no-wake zone designated in 2015). The total number of restricted acres described in question 1 included all proposed restrictions in Topock Marsh and the proposed ~2-mile area from the no-wake zone down to Mesquite Bay.

4. How many total acres within the Refuge, including the Havasu Wilderness Area, already restrict horsepower or prohibit waterskiing, wakeboarding, fishing and other recreational-towed devices?

Response: The following are existing restrictions on the Refuge:

- Approximately 4,400 acres of the ~17.5-miles (within the main River channel and its backwaters) prohibit water-skiing, tubing, wake boarding or other recreational towed devices as well as wake and personal watercraft as indicated by signs and buoys. This includes:
 - Approximately 150 acres of Devil’s Elbow are designated no-wake.
 - Approximately 26 acres near the I-40 bridge and Topock 66 Marina are designated no-wake.
- Approximately 100 acres of Mesquite Bay are closed to motorized watercraft.

5. How many total acres on Lake Havasu already restrict horsepower, have no-wake zones or prohibit certain motorized boating activities, including restrictions by BLM and other government agencies?

Response: The Service does not know how many acres are impacted by boating restrictions imposed by other government agencies including the BLM. Within Refuge jurisdiction, approximately 100 acres of Mesquite Bay are closed to motorized watercraft. North of Mesquite Bay is the ~100 acre no-wake restriction of 2015.

6. Of the 700 acres of the Havasu reservoir on the Refuge, how many acres will have restricted horsepower or prohibit waterskiing, wakeboarding, fishing and other recreational boating if the CD is implemented?

Response: Approximately 700 acres within the Refuge portion of the ~19,300 acre Lake Havasu Reservoir will have restricted uses.

It is important to note that at the southern end of the Refuge, the Refuge boundary is defined by the state line bisecting the river. Therefore, the California side of the river channel is not within the Refuge boundary and is not included in these ~700 acres. As such, applicable California regulations will remain unchanged.

7. In a July 10th response from your agency to my letter objecting to the May 2015 boating restrictions for the Havasu Refuge which were made two days before Memorial Day and without public comment, the Service stated that these arbitrary restrictions were lawful under its regulations in the form of 50 CFR 32.22. That particular regulation

deals with regulations for hunting and fishing within the Refuge. The Service is now citing a different regulation to justify these restrictions. Was that a mistake or did your agency fail to identify the proper authority prior to making the May 2015 closure?

Response: The no-wake zone was established in May 2015 based on the following facts as identified by Refuge staff and visitors: (1) wake-causing motorized boating in the area impacts crucial riparian and wetland habitat needed for foraging, breeding, loafing and nesting for a wide variety of residential and migrating birds including the Clarks and Western grebe and endangered Ridgeway's rail; (2) wake-causing motorized boating in the area posed threats to non-motorized boaters because wakes generated by high speed motorized boats in narrow channels and backwaters cannot readily dissipate resulting in unsafe conditions and potential to capsize or swamp non-motorized users; (3) wake-causing motorized boating in the area is impacting refuge-dependent wildlife in the area causing shoreline erosion of their habitat, bird strikes, vegetation destruction and floating nest disturbance. The Service takes all concerns regarding risks to visitor and natural resource safety seriously and is committed to being responsive when conflicts arise. Safety concerns regarding wake speeds and water depth brought to the attention of refuge management prompted further evaluation of uses impacting refuge resources.

Although the header for 50 CFR 32.22 relates to Sport Fishing, all boating regulations for the Refuge fall under this category. It was appropriate to have boating restrictions under 50 CFR Part 32 when making fishing compatible with the refuge-specific mission, Service mission, and to ensure public safety. On September 13, 2005 the Refuge regulations were revised in the Code of Federal Regulations and 50 CFR 32.22 paragraph D incorporated subparagraphs 1 through 6 to include regulations on Topock Marsh, 17 miles of the main river channel and Mesquite Bay. The May 2015 ½ mile backwater no-wake designation was an extension of the 17-mile existing regulations.

The regulatory guidelines used to make this designation is present not only in the Code of Federal Regulations (50 CFR 32.22 and 25.21), but also in the guiding legislation for the National Wildlife Refuge System and The National Wildlife Refuge System Improvement Act of 1997 (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966. The Improvement Act states, "Wildlife-dependent recreational uses may be authorized on a refuge when they are compatible and not inconsistent with public safety." The threshold to determine compatibility is outlined in the Improvement Act and Service policy. The threshold is high and the Refuge Manager has the authority to impose restrictions to make an activity compatible. Wildlife-dependent recreational opportunities, such as fishing, get precedence over non-wildlife uses.

- 8. The Service has since changed its justification for the May 2015 restrictions as the CD states these restrictions were lawful under 50 CFR 25.21 (e). This regulation allows temporary closures in the "event of a threat or emergency endangering the health of the general public or Refuge resources." This isn't the EPA Animas spill and there is no pending threat or emergency. Further, the CD states that a NEPA categorical exclusion was allowed for the May 2015 restrictions "due to the absence of controversy related to environmental impacts." There was plenty of controversy and the Service knew about it**

as documented in multiple Freedom of Information Act requests. I will ask you again, what legal authority does your agency cite to go around arbitrarily closing motorized boating activities in areas utilized by recreational enthusiasts for decades?

Response: No areas have been or are proposed to be closed to motorized boating.

The Service believes the May 2015 decision met the considerations discussed in 50 CFR 25.21. The regulation states, “In the event of a threat or emergency endangering the health and safety of the public or property or to protect the resources of the area, the Refuge Manager may close or curtail refuge uses of all or any part of an opened area to public access and use in accordance with the provisions in § 25.31, without advance notice.” The threat may relate to the endangerment of refuge users as well as to protect the resources of an area.

The Service takes all concerns regarding risks to visitor and natural resource safety seriously and is committed to being responsive when conflicts arise. Because this area is shallow and narrow, high-speed boats may not be able to safely share the waterway with non-motorized craft thereby creating a threat to users. Safety concerns regarding wake speeds and water depth were brought to the Service’s attention. The Service investigated the matter and found that there were conflicts in uses posing safety concerns and impacts to resources. This review prompted further evaluation of all boating uses impacting refuge resources. The Refuge found the no-wake designation in the backwater, known to some visitors as “speed alley,” to be a necessary action for the continued safety of the public and the protection of area resources.

The now withdrawn draft CD stated that a National Environmental Policy Act (NEPA) categorical exclusion was allowed for the May 2015 restrictions “**due to the absence of controversy related to environmental impacts.**” This allowance specifically states controversy related to environmental impacts, not recreation. The Service is aware of little to no controversy regarding the effects that boating restrictions will have on natural resources.

- 9. I appreciate you granting our request to hold a public meeting in Lake Havasu City. Why wasn’t a meeting scheduled here in the first place? Why did the Service only schedule two public meetings on this matter, both on the same Tuesday at the same location in Laughlin, Nevada?**

Response: The Service’s compatibility policy 603 FW 2, section 2.12A(9) provides guidance on public review and comment. The Service is required to provide an opportunity for public review for a minimum of 14 days. No public meetings are required. In this case, however, we believed it was important to hear from the community directly, so we initially committed to holding two public meetings at a venue in Laughlin, Nevada because it could accommodate a large group and was easily accessible to interested parties in three states. Due to significant community interest in Lake Havasu City, the Service agreed to hold a third public meeting in Lake Havasu City. We secured a venue in Lake Havasu City, however there was concern the location would be unable to accommodate the expected number of participants. After our public announcement of the Lake Havasu City meeting, the Mayor of Lake Havasu City and others offered use of the Aquatic Center, which could hold a large

capacity of people. We were pleased to accommodate that request once we became aware of the availability.

10. On April 29th, 21 bipartisan members of the House expressed concern about the CD and requested a 60-day extension of the comment period. This same request has been made by Lake Havasu City Mayor Mark Nexsen, the Arizona Game and Fish Department and the Lake Havasu Area Chamber of Commerce. Will the Service adhere to these requests for a 60-day extension of the public comment period? If not, why not?

Response: The Service is committed to better understanding the concerns raised by local stakeholders and encourages public participation. As such, a public meeting was held on May 2, 2016 in Lake Havasu City and two additional meetings were held in the surrounding area of Laughlin on May 3, 2016. Due to the level of interest in recreational boating on the Refuge, the Service decided to expand the public comment period from 30 days to 60 days making the new closing date June 13, 2016. For ease of access, the Draft CD was made available for review and comment at the following website: www.fws.gov/refuge/havasu

11. Is the agency intent on seeking to impose the CD prior to Memorial Day Weekend?

Response: The Service did not impose any new restrictions prior to Memorial Day weekend, 2016. The draft CD was withdrawn following the close of the comment period.

12. Will you scrap the CD announced April 12, 2016?

Response: The CD released on April 12, 2016 was a draft proposal. It was not finalized. The Service intends to work with local community leaders and others before moving forward with any revised proposal.

13. The current refuge manager has demonstrated a clear conflict of interest and disregard for public involvement in this process. If the Service chooses to move forward with the CD, will you encourage Regional Director Tuggle to make the final decision as to whether or not to implement the CD and remove that decision from the current refuge manager?

Response: The Service is unaware of a conflict of interest. The Refuge Manager is an employee of the Service and was acting within the scope of her position and authorities when she designated the no-wake zone to ensure visitor safety and initiated the draft CD.

As directed by the Improvement Act, the Service promulgated regulations establishing the process for determining whether the use of a refuge is a compatible use (50 Code of Federal Regulations Part 26.41). The regulations direct the Refuge Manager to only permit a new use, or expand or renew an existing use, if it is determined the use is a compatible with the Refuge's purpose. These regulations outline the procedures for documenting compatibility determinations including what a compatibility determination must contain and who has the

authority to make the final decision. The regulations give the authority for making the decision to the Refuge Manager and Regional Refuge Chief.

All decisions on final determination are made after close coordination with Regional Director, Dr. Benjamin Tuggle.

14. What is the primary justification for the expanded boating restrictions found in the CD?

Response: Wildlife-dependent recreational uses may be authorized on a refuge when they are compatible and consistent with public safety and the purpose of the Refuge. The provisions to determine compatibility is outlined in the Improvement Act and Service policy. The Refuge Manager has the authority to impose restrictions to make an activity, such as boating, compatible with the purpose of the Refuge.

The Refuge Improvement Act of 1997 states the following:

“3) With respect to the System, it is the policy of the United States that— (A) each refuge shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established; (B) compatible wildlife-dependent recreation is a legitimate and appropriate general public use of the System, directly related to the mission of the System and the purposes of many refuges, and which generally fosters refuge management and through which the American public can develop an appreciation for fish and wildlife;

(4) In administering the System, the Secretary shall— ‘(A) provide for the conservation of fish, wildlife, and plants, and their habitats within the System; (B) ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans;”

In 1990, the U.S. Fish and Wildlife Service (Service) began a Comprehensive Management Plan (CMP) for the lower Colorado River refuges (U.S. Fish and Wildlife Service 1994). The CMP specifically addressed boating in the following goals and objectives:

“Goal #12 is to reduce levels of non-wildlife oriented recreation on the River channel that runs through the lower Colorado River refuges, to eliminate all non-wildlife oriented recreation that is not compatible, to increase the quality experience related to natural values by all River visitors, and to raise public awareness of the lower Colorado River ecosystem values.

Objective #2 under Goal #12 is to protect wildlife resources by implementing the appropriate zoning policy for sensitive areas of the Refuges, especially those pertaining to endangered species. Each Refuge Manager will review existing refuge zoning regulations and implement zones that take into account refuge purposes and the proximity to other jurisdictions that are more

conducive to the non-wildlife oriented uses (i.e., water-skiing areas, jet skiing areas).

The CMP provided a list of secondary uses not planned to occur at any of the lower Colorado River National Wildlife Refuges because they do not conform to uses, which could be, in a regulated manner, “compatible” with the purposes of the Refuge, or they have been determined to be harmful to refuge resources. The CMP underwent close coordination with a number of entities, as well as public comment and the NEPA process.

Additionally, the Fish and Wildlife Service Manual 603 FW2 states the Service will “...reevaluate compatibility determinations for all existing uses other than wildlife-dependent recreational uses when conditions under which the use is permitted change significantly, or if there is significant new information regarding the effects of the use, or at least every 10 years, whichever is earlier. Additionally, a Refuge Manager always may reevaluate the compatibility of a use at any time.”

To comply with the Improvement Act and Service Manual standards, the Service proposed several restrictions in the draft CD.

15. What objective analysis, science and statistics do you have to support the CD?

Response: The purpose of a CD is to determine if a use is compatible or not compatible with the Service mission and Refuge purpose(s). Per the Service Manual 603 FW 2, “A proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the national wildlife refuge.”

The Refuge is required to maintain biological integrity, diversity, and environmental health for the benefit of migratory birds and all other species that feed, breed, and shelter on the Refuge. Recreational high-speed boating can adversely impact Refuge habitats and wildlife. Refuge staff and visitors have witnessed the flushing of birds, nest disturbance, bird strikes, and habitat destruction from wake-causing motorized boating. Because boats produce emissions, turbulence from propulsion, wakes, pollution and noise, the Refuge Manager must evaluate where these specific uses may occur as these factors may affect wildlife use patterns, use of particular habitats, feeding behavior and early departure of migratory birds dependent on the Refuge as a resting ground. As the land management agency responsible for the protection of endangered species and other wildlife, all potential impacts must continue to be evaluated for their compatibility with the refuge purpose.

The withdrawn draft CD found that boating is compatible with the National Wildlife Refuge System mission and the Refuge purpose with proposed restrictions. The Service is committed to working collaboratively with local community leaders to find a path forward that both meets the needs of the community and the purpose of the Refuge as well as supports the Service’s mission.

16. What alternatives, if any, were considered prior to releasing the CD?

Response: The Service is responsible for reviewing existing refuge zoning regulations and implementing zones that take into account refuge purposes and the proximity to other jurisdictions that are more conducive to the non-wildlife oriented uses (i.e., open water for high-speed uses, like Lake Havasu). Based on sound professional judgment, refuge management evaluated area locations and uses to determine potential negative impact to refuge resources and visitors participating in priority public uses. The Service considered several alternatives, including a “no action” alternative when developing the draft CD, before pursuing the alternative with proposed restrictions identified in the draft CD.

17. Other than employees within the Service, who was consulted prior to releasing the CD and what is your record of consultation?

Response: The Service believes the draft Compatibility Determination was consistent with the principles outlined in the Comprehensive Management Plan of 1994, the current guiding document for Havasu National Wildlife Refuge management. The CMP underwent public comment in 1991 and NEPA prior to its completion in 1994.

During the CMP planning process, meetings were held with the following agencies and organizations: Arizona Game and Fish Department; California Department of Fish and Game; Nevada Department of Wildlife; California Department of Parks and Recreation; Arizona State Parks; BLM; Bureau of Indian Affairs; Department of the Air Force; Chemehuevi Indian Tribe; Fort Mojave Indian Tribe; Colorado River Indian Tribe; City of Lake Havasu, Arizona; City of Blythe, California; City of Needles, California; Colorado River Environmental and Wildlife Society (Martinez Lake, Arizona); Sierra Club; Audubon Society; Yuma Rod and Gun Club; Palo Verde Rod and Gun Club; Lake Havasu City Chamber of Commerce; Parker Arizona Chamber of Commerce; Golden Shores/Topock Chamber of Commerce; Arizona Wildlife Federation; Arizona Department of Environmental Quality; Arizona Department of Water Resources; Arizona State Lands Department; Arizona Nature Conservancy; Lake Havasu City Bass Club; and Arizona Trappers Association. The U.S. Bureau of Reclamation was also a cooperating agency in this project.

Public meetings were held as follows:

- August 28, 1991, Yuma, Arizona
- August 29, 1991, Blythe, California
- August 30, 1991, Lake Havasu City, Arizona
- August 31, 1991, Needles, California

18. According to the Service’s own estimates, nearly three million visitors vacation at Lake Havasu each year and a typical holiday weekend draws nearly 50,000 boaters to the area. According to a 2008 Lake Havasu City Tourism Survey, nearly 75% of tourists are interested in water skiing, wakeboarding or boating while visiting Lake Havasu. The survey also revealed tourists spend more than \$200 million and support nearly 4,000 full-time equivalent jobs. Did the Service carefully consider the economic impacts

that could result from the CD? If so, what specific actions did the Service take to mitigate any economic harm?

Response: Currently, 17.5 miles of the Colorado River on the Refuge restrict certain uses.

It is important to note that significant numbers of visitors participate in several priority public uses including hunting, fishing, wildlife observation and photography, environmental education and interpretation on the Refuge. Due to the number of uses on the Refuge, the Service anticipates visitors would continue to visit the Refuge in large numbers and bring commerce to the local area. To highlight one of the many user communities that visit the Refuge, anglers and fishing groups are some of the highest users of Lake Havasu. High-grossing fishing tournaments continue to bring these wildlife-dependent users to the area. According to Lake Havasu City's Convention and Visitors Bureau, fishing tournaments on Lake Havasu can require up to \$200 solely for team admission. We also expect the fishing community will continue to use boating vendors in the Havasu area and fishing continues to be allowed in all areas of proposed restrictions. As another example of tourist activities, the Refuge is part of a major migratory bird migration route along the western coast of the United States making the Refuge a birding hotspot with 318 bird species drawing in bird enthusiasts and wildlife photographers, all of whom will continue to add to the local economy.

19. In November 2013, the Fish and Wildlife Service inflated costs for fixing a broken water supply line by millions of dollars and attempted to terminate the rainbow trout stocking program at Willow Beach, threatening 1,700 jobs and \$75 million in associated economic output. It took significant efforts from myself, Senator McCain, and others to reverse that terrible decision. Why does the Service continue to ignore important associated economic impacts for Mohave County prior to implementing new restrictions and unilaterally changing programs?

Response: The U.S. Fish and Wildlife Service (Service) has completed construction of a long-term water supply system for the Willow Beach National Fish Hatchery. With recognition of your support, the Service announced the successful completion of the floating pipeline project on August 5, 2016.

The Service understands that the fish supplied by our National Fish hatcheries provide important economic and recreational opportunities to the states, tribes, and recreational communities. Since its construction, the Willow Beach National Fish Hatchery has long helped provide economic benefits to Arizona. It was devastating to the Service, Tribes, the local community and many others when, due to age and wear, the hatchery experienced a significant water supply system failure, leading to the loss of 40,000 fish in 2013. Tremendous efforts were made to save as many fish as possible and to look at potential alternatives to repair the system.

Early cost estimates to completely revamp the system and implement safeguards against a future failure were very high. For more than a year, the Service met with the Arizona Game and Fish Department, Mohave County of Arizona, and the National Park Service to develop

viable, less costly solutions. The team agreed on a project proposal (Floating Pump) that provides a sufficient and reliable water supply system at an estimated cost is \$776,448. In a partnership agreement, the Arizona Game and Fish Department (AZG&FD) and the Service agreed to share costs, with AZG&FD providing \$389,000.

Following a competitive bid process, Performance Systems, Inc. was selected to complete the project for \$801,506. Modifications were made to take additional precautionary measures, including installation of safety measures for regular maintenance and creation of a barrier to prevent invasive quagga mussels from entering the pipeline. This increased costs by an additional \$211,704. The Service is covering these additional costs through its operations and maintenance accounts.

Now that testing of the new water conveyance system is completed, trout production will recommence at Willow Beach NFH. To better meet the needs of anglers, the Service will continue to work with AZG&FD to expedite initial production of trout and shorten the timeframe for catchable size trout to be available. The Service will also work on a stocking schedule with the AZG&FD to ensure that the fishing experience can be enjoyed the entire season.

20. I want to now turn my attention to the Mexican Wolf, an issue that is very important to the Southwestern States. On November 13, 2015, the four Governors from the states of Arizona, Colorado, New Mexico and Utah sent a bipartisan letter expressing serious concerns and a unified position in opposition to the “Service’s [new] planned approach to recovery plan development” for the Mexican gray wolf. On December 11, 2015, House Committee on Oversight and Government Reform Chairman Chaffetz, Subcommittee of Interior Chairman Cynthia Lummis, House Natural Resources Committee Chairman Rob Bishop and several of our colleagues reiterated those very valid concerns in a letter to you and Secretary Jewell. In a February 3, 2016 response to that letter, you stated, “The Service has initiated recovery planning discussions with the States of Arizona, Colorado, New Mexico and Utah; Federal agencies in Mexico; and independent and objective scientists from the United States and Mexico.”

21. Why exactly is the Service having planning discussions with Colorado and Utah?

Response: The Service has a unique relationship with the states in recovery and management of threatened and endangered species, as laid out in the Endangered Species Act. The states of Colorado and Utah have been involved in recovery planning for the Mexican wolf since 2003, when our recovery planning efforts were focused on a Distinct Population Segment that included those states up to Interstate 70. Subsequently, they were invited to participate in the Mexican Wolf Recovery Team that was appointed in 2010, which focused on the Mexican wolf subspecies rather than a Distinct Population Segment. During that recovery planning effort, some scientific experts on the Science and Planning Subcommittee of the recovery team considered habitat north of I-40 in Arizona and New Mexico as potentially suitable habitat for recovery efforts. More recently, Colorado and Utah have also been participating in the recovery planning workshops that commenced in December 2015 to assist the Service in the development of our revised Mexican wolf

recovery plan which is due to be published in November 2017.

22. The wolf has had no presence in these states historically. Are you all looking at expanding the habitat of the Mexican wolf to include territories in Colorado and Utah?

Response: The Service has no current plans to reintroduce Mexican wolves into either Utah or Colorado. The Service, the states of Arizona, Colorado, New Mexico, and Utah; the Mexican government, and scientists from both countries are currently assessing the amount of suitable habitat and prey in Mexico that could contribute to recovery. We will consider this information in combination with our population objective of 300 to 325 wolves in the Mexican Wolf Experimental Population Area to determine whether recovery is possible south of I-40 in the southwestern United States and in Mexico. If, based on this information, we are not successful in identifying sufficient habitat to support recovery, we will look elsewhere for additional suitable habitat to achieve Mexican wolf recovery. Recent genetic evidence in published scientific literature indicates that gene flow occurred between Mexican wolves and other gray wolf subspecies as far north as Utah.

23. Despite the fact that 90% of the Mexican wolf’s historic range is in Mexico, the Service seems committed to restoring Mexican wolves only in the United States. Why?

Response: The Service has demonstrated a commitment to binational collaboration with Mexico in Mexican wolf recovery since the inception of the binational Mexican wolf captive breeding program in the early 1980’s. We continue to have an active relationship with federal agencies in Mexico to implement field activities for the reintroduction efforts in both countries. In addition, Mexico federal agencies have participated in our recovery plan revision processes in 2003 and 2010, as well as our current series of workshops. In April, we held a recovery planning workshop in Mexico City (following December 2015 and March 2015 meetings in Arizona) to ensure robust participation by Mexico federal agencies and independent scientists. In addition to gathering and assessing scientific information at the workshop, we also discussed avenues for binational collaboration in the recovery of the Mexican wolf. The Service and federal agencies in Mexico will continue to explore mechanisms for a binational recovery effort.

Applicable information for determining areas suitable for Mexican wolf recovery includes suitable habitat features, adequate prey, and low human density. As is our standard, the Service will use the best available scientific information to evaluate appropriate areas for Mexican wolf recovery. We expect to complete the recovery plan by November 2017.

24. You also stated in your February 3, 2016 response “The revised recovery plan will also provide estimates of the time required and the cost to carry out those measures needed to achieve the plan’s goal.” Do you have any preliminary estimates of those costs and time that you can share with the Committee today?

Response: No. The information on costs and time will depend on the actions needed to recover the Mexican wolf. This information will be provided in the draft recovery plan,

which is currently under development and is expected to be completed by the end of 2016.

- 25. On January 16, 2015 the United States Fish and Wildlife Service announced its decision to list the Mexican wolf as an endangered subspecies and arbitrarily expanded the range the wolves can roam in Arizona and New Mexico under Section 10(j) of the ESA.**

Why did your agency violate the Anti-Deficiency Act and fail to secure funding for the 10(j) nonessential experimental Mexican wolf population program before implementing this new program? Regional Director Tuggle admitted this fact on a conference call with stakeholders announcing the program.

Response: The Service did not arbitrarily expand the range into which Mexican wolves can be released and disperse in New Mexico and Arizona in the revised 10(j) Rule. The revised 10(j) Rule thoroughly analyzed the expansion of the Mexican Wolf Experimental Population Area (MWEPA). This expanded area will promote Mexican wolf population growth, genetic diversity, and management flexibility. The regulatory flexibility provided by our revisions to the 1998 Final Rule, including expansion of the MWEPA, will allow the Service to take management actions within the MWEPA that further the conservation of the Mexican wolf while being responsive to needs of the local community in cases of problem wolf behavior. There is no basis for the allegation that the Service has in any way violated the Anti-Deficiency Act in its implementation of the revised 10(j) Rule.

- 26. The Service has been producing genetically modified wolves ever since the January 2015 announcement and 45% of those died last year. On your watch the population of the Mexican wolves in the wild actually declined by 12.5% last year. Why is the Service doing such a terrible job managing Mexican wolf populations?**

Response: The experimental population has demonstrated several years of strong growth in recent years (2011-2014). The Mexican wolf pups that were documented in the wild in 2015 were all born in the wild to wild parents, which demonstrate that the population continues to self-perpetuate and is not demographically reliant on releases from captivity. In the 2014 Environmental Impact Statement for the Proposed Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf, we projected a 10 percent average annual growth of the population, which anticipates that there will be years with less than and greater than that projected growth rate. It is normal for population growth of any species to fluctuate over time.

Recovering the Mexican wolf into its historic landscape has unique challenges unlike other gray wolf recovery programs. In the Northern Rocky Mountains, gray wolves were captured in Canada and released directly into Yellowstone National Park and the Central Idaho Wilderness. In contrast, the reintroduction of the Mexican wolf has been reliant on the release of captive bred Mexican wolves because Mexican wolves were completely eliminated from the wild by the 1980s. We captured seven of the last remaining wolves and developed a binational captive breeding program. From this captive population of 7 founder wolves, we began releasing wolves back into the wild in the Apache National Forest in 1998. In addition, unlike Yellowstone National Park, which was a large swath of protected lands to

reintroduce wolves into, the Apache National Forest is a working landscape, and thus we need to address effects of wolves on livestock production, hunting, and recreation.

27. I have heard serious concerns from cattlemen and ranchers in my district since you made that arbitrary decision in January 2015. How many Mexican wolf attacks have occurred since that January 16, 2015 decision? How many attacks have occurred since the wolf was first listed in 1976 and been under your agency's care?

Response: There have been no Mexican wolf attacks on humans since the reintroduction program began in 1998. Any person has the right to take a Mexican wolf in self-defense or the defense of another person.

We recognize that livestock depredation occasionally occurs. Between 1998, when our reintroduction effort began, and 2013, we documented 184 confirmed cattle depredations by Mexican wolves. More recently, in 2014, we documented 30 cattle mortalities from wolves; in 2015, we documented 52 cattle mortalities and 8 cattle injuries, and so far in 2016 we have documented 8 cattle mortalities.

28. Has the service done genetic testing on Mexican wolves? If so, how many? What were the results?

Response: Yes, we conduct genetic testing. We monitor the genetics of the wild population by taking blood samples from every canid handled, as well as through the collection and testing of scat in some areas. All samples are sent to the University of Idaho for species confirmation, meaning the samples are determined to be from a pure Mexican wolf, pure coyote, pure dog, etc. Since reintroduction of Mexican wolves began in 1998, the Fish and Wildlife Service has detected three instances of hybridization between Mexican wolves and domestic dogs. In all three cases the offspring were removed and euthanized. We have not detected other evidence of Mexican wolves hybridizing with dogs or coyotes.

29. Mr. Ashe, we know that the Endangered Species Act requires Fish and Wildlife Service (FWS) to consult with and receive input from counties affected by petition listings and regulations written as a result of ESA listings. And in your testimony you talked about the successful partnerships the Service has engaged in over the years to carry out your work. However, this committee, the Natural Resources Committee, and dozens of Members offices are flooded with complaints about how the Service blatantly disregards state and local input when formulating new regulations and policy. I am not sure we can even count how many law suits you have pending against your agency from states who clearly feel that they were not involved in the decision making process. Just this week New Mexico state officials notified your agency regarding their intent to sue over your new plan to release captive Mexican wolves into New Mexico to "cross-foster" with wild packs in an attempt to infuse some DNA diversity into the wild population. I don't know how you choose to define collaboration, but all these law suits don't really sound like the rosy kumbaya cooperation your agency tries to depict to this committee. Why is New Mexico planning to sue you from your perspective?

Response: The Service values the partnership we have with the New Mexico Department of Game and Fish, and it remains our policy to consult with the States and others in our joint efforts to recover species. Recovery of the Mexican wolf remains the Service's goal. We have a statutory responsibility and the authority to recover the Mexican wolf and strive to do so in a collaborative manner with our partners. We continue to engage the State of New Mexico in the Mexican Wolf Recovery Program, even though they have withdrawn as a partner agency. We are also involved in meetings with them regarding their recent notice of intent to sue regarding the Service's continued activities to recover the Mexican wolf so that it can be delisted and returned to state management. The remaining lead agencies have primary regulatory jurisdiction and management authority of the Mexican wolf in Arizona and New Mexico. Graham, Greenlee, Gila, and Navajo counties in Arizona, and the Eastern Arizona Counties Organization are designated as cooperators to the reintroduction project with an interest in Mexican wolf management. The MOU, which expired in 2008, was revised and signed by the cooperators in and subsequent to 2010. The Service remains committed to involving all partners and vested parties in managing Mexican wolves.

30. The Mexican wolf has lingered on the Endangered Species list for more 40 years. The Service has utilized the same flawed recovery plan for the Mexican wolf since the early 1980s. This plan does not comply with federal law as it does not contain objective and measurable recovery data for delisting as required by 4(f)(1) of the ESA. Why has your agency failed to comply with those requirements of law? How much longer do you expect the Mexican wolf to linger on the Endangered Species Act?

Response: The Service intends to publish a final revised recovery plan by November 2017 that incorporates the best available scientific information. The revised recovery plan will, to the maximum extent practicable, provide measurable and objective criteria which, when met, will enable the Service to remove the Mexican wolf from the list of endangered species and turn its management over to the appropriate states and tribes. The revised recovery plan will also provide estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal.

Our greatest conservation need at the current time is to improve the genetic health of the experimental population, which has a high level of relatedness and is experiencing inbreeding. We will improve the experimental population's genetic health by releasing additional Mexican wolves from the captive population, which is more genetically diverse because we are able to actively manage breeding pairs to maintain gene diversity. The experimental population is expected to contribute toward the recovery of the Mexican wolf; however, the establishment of additional populations of Mexican wolves in Mexico or the US is likely to be necessary to achieve recovery based on our current scientific understanding, though that cannot be confirmed until the recovery plan is developed. Expediency in improving the genetic health of the experimental population is critical to moving the Mexican wolf toward recovery.