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Greetings:

South Florida Wildlands Association (SFWA) appreciates the opportunity to provide these comments on the Arthur R. Marshall Loxahatchee National Wildlife Refuge Draft Visitor Services Plan and Environmental Assessment (VSP).

Founded in March of 2010, SFWA is a small South Florida non-profit dedicated to the protection of wildlife and wildlife habitat in the Greater Everglades. The scope of our work encompasses both private and public lands as well as uplands, wetlands, and open water. As public lands now provide the bulk of the quality habitat which remains for wildlife in our rapidly growing region, SFWA has had a particular focus on public lands. We have participated actively in the re-write of General Management Plans for Biscayne and Everglades National Parks, the Hunting Management Plan and General Management Plan for the Addition Lands of the Big Cypress National Preserve, Management Plans for many of the state-run Wildlife Management Areas (WMA's), and numerous other land management decisions – including this plan and the recent decision to open portions of the Loxahatchee National Wildlife Refuge (the Lox) to alligator hunting. Executive Director Matthew Schwartz has been appointed by the FWC to the Management Advisory Groups for several South Florida WMA's.

With regard to the VSP open for public comment, we believe that this planning document is lacking in several respects.

Most importantly, numerous changes are being proposed simultaneously with regard to current management of the refuge. Those can be summarized as follows:

1. The entire refuge would be open to public access 24 hours a day with the exception of Lee Road. In current management, most of the Lox is closed to public access.

2. Allow airboat use in the refuge interior from the south entrance at Loxahatchee Road. Airboat use will be contained within roughly the southern 1/3 of Refuge. In current management there is no airboat use allowed.
3. Allow airboat-based white-tailed deer hunting in the refuge interior, A-Impoundment Trail and Cypress Swamp near the refuge headquarters, and in the Strazulla Marsh. During hunts, the entire refuge interior can be accessed by airboat. In current management there is no airboat use or deer hunting allowed. The interior of the refuge is off-limits.
4. Open the entire perimeter levee 24 hours a day. The levee would be open for horseback riding and pets on leashes. Under current management neither horseback riding nor pets are allowed.
5. Allow frog-gigging. In current management no frog-gigging is allowed.
6. Increase alligator hunt permits.
7. Build a wildlife observation boardwalk in Strazulla Marsh.
8. Establish campsites. Under current management, no camping is allowed inside the refuge.
9. Develop an environmental education center.
10. Establish additional canoe trails in the refuge interior.
11. Increase areas available for waterfowl hunting. Under current management, waterfowl hunting is limited to roughly the southern 1/3 of the Refuge interior.

Although the U.S. Fish and Wildlife Service (FWS) chose to evaluate this plan by preparing an Environmental Assessment (EA) SFWA strongly believes this new plan constitutes a major federal action – where an EIS is required.

According to the EPA (see: <https://www.epa.gov/nepa/national-environmental-policy-act-review-process>), “Federal agencies prepare an Environmental Impact Statement (EIS) if a proposed major federal action is determined to significantly affect the quality of the human environment. The regulatory requirements for an EIS are more detailed and rigorous than the requirements for an EA.”

The key word in this requirement is “significantly.” Here is the definition of that term as explained in Code of Federal Regulations (CFR) 1508.27:

§ 1508.27 Significantly.

Significantly as used in NEPA requires considerations of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

- (1)** Impacts that may be both beneficial and adverse. A significant effect may exist even if the [Federal agency](#) believes that on balance the effect will be beneficial.
- (2)** The degree to which the proposed action [affects](#) public health or safety.
- (3)** Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
- (4)** The degree to which the effects on the quality of the human environment are likely to be highly controversial.
- (5)** The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
- (6)** The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
- (7)** Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
- (8)** The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.
- (9)** The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species [Act](#) of 1973.
- (10)** Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

[[43 FR 56003](#), Nov. 29, 1978; [44 FR 874](#), Jan. 3, 1979]

Any one of the above is enough to trigger the preparation of an EIS. In this case, many apply.

1. Public health can be impacted by hunting, motorboats, airboats, and horseback riding (significance factor 2). The soundscape and experience of the preserve for the current users will surely be impacted significantly.

2. The area clearly has “unique characteristics.” The Lox is described by the FWS as “the last remnant of the once vast northern Everglades ridge and slough landscape.” It is rare as well as ecologically isolated by large-scale sugar farming to the west of the refuge and dense (and growing) suburban development to the east (significance factor 3).

3. Nearly the entire refuge consists of federally jurisdictional wetlands inundated for most of the year or Everglades tree islands or hammocks which are wet or saturated for significant periods (significance factor 3). See FWS “Wetland Mapper”:

<https://www.fws.gov/wetlands/data/mapper.html>

4. Nearly all of the proposed actions are novel with regard to previous and current refuge management and will carry impacts that at this time are unknown. Examples given in the EA are the possible impacts of frog-gigging on the food supply of wading birds and the impacts from airboat motor noise on nesting birds. There are many others. The introduction and expansion of hunting in the refuge has been particularly controversial as evidenced by public comment on this current action and the recent action allowing alligator hunting in the refuge for the first time in its history (significance factors 4 and 5).

5. As noted above, many precedents are being set with this decision. In fact, nearly all current actions are a break with current refuge management. With regard to airboat use (one of the most impactful and controversial of the activities being proposed), that constitutes a re-introduction of an activity that had already been eliminated from use within the refuge by an incompatibility determination made by the refuge itself in 1990. That determination is quoted below. The determination itself is attached and submitted along with these comments (significance factor 6).

“Justification for noncompatible determination: Private airboats disturb endangered species, wintering waterfowl and nesting wading birds; airboats cause harmful impacts and or alter habitat in such manner as to require modification of wildlife behavior to compensate for the changes; regulation of airboat activities is virtually impossible due to the nature of the activity and the ability to properly perform law enforcement: loss of adjacent natural resources and climatic conditions concentrate more wildlife into the same area as used by private airboats; private airboating use has continued to decline during recent years to the point that only 20 permits were issued in 1988. The refuge has been closed to airboating due to low water conditions since October 1988. With the current closure in affect, this would be a favorable time to eliminate this noncompatible use.”

6. The EA prepared by the FWS examines each of the proposed activities separately – deciding, for example, on a Categorical Exclusion for some and an EA and Finding of No Significant Impact (FONSI) for others. That is expressly prohibited in the above regulation which states, “Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by

terming an action temporary or by breaking it down into small component parts.” The sum total of changes to the preserve in terms of round the clock access, opening the entirety of this protected preserve to public access, vastly increased motorized recreation, the introduction of airboats, the introduction of deer hunting, and other activities novel and precedent-setting for this refuge, constitutes a significant impact on the preserve – the impacts of which can only be determined by preparation of an Environmental Impact Statement (significance factor 7).

7. As already noted above, the Lox is the only sizeable remnant of the northern Everglades which remains intact. Many of the proposed activities “can or may cause loss or destruction of significant scientific, cultural, or historical resources” (significance factor 8). Those must be thoroughly examined in an Environmental Impact Statement.

8. The Lox is a known hotspot of biodiversity in the remnant Everglades. Here is a description of that wildlife according to the EA itself:

“The Refuge provides important feeding, roosting, and nesting habitats for many species of birds. mammals. reptiles. amphibians, and fish. In a given year, as many as 257 species of birds may use the diverse habitats found on the Refuge. Of those, approximately 93 species are considered common or abundant during certain seasons.

“Over forty species of fish, 23 species of mammals, 10 species of turtles. 8 species of lizards, 11 species of anurans (frogs and toads), and 24 species of snakes have been documented on the Refuge. Alligators are considered keystone species in the Everglades ecosystem because of their critical role in creating dry season refugia for the aquatic organisms that make up the prey base.

“At least 63 plant or wildlife species listed by the State or Federal government as endangered. threatened. or species of special concern are known to occur on the Refuge, either currently or historically. These species include, but are not limited to: the wood stork (*Mycteria americana*). Everglade snail kite (*Rostrhamus sociabilis*), bald eagle (*Haliaeetus leucocephalus*). Florida sandhill crane (*Grus canadensis pratensis*). snowy egret (*Egretta thula*). little blue heron (*Egretta caerulea*), tricolored heron (*Egretta tricolor*), and roseate spoonbill (*Ajaia aja/a*) (USFWS 2000).”

There are few places in the U.S. which contain this level and concentration of biodiversity. Here is a sentence from the EA just with regard to airboat impacts:

“Potential impacts of motorized watercraft include disturbance via noise, physical collision, disturbance to soils and vegetation communities, changes in water quality and hydrology, and spread of invasive species.”

The sum total of these combined actions – powerboats, airboats, greatly increased hunting and access, camping, dogs, horses, and others – on the wildlife of this rare and special place will be enormous. Current visitors and their use will also be impacted. A full-blown EIS thoroughly examining the possible consequences for each of the proposed actions is the only way to allow for a full examination of those impacts before

this plan is implemented (the very heart of the National Environmental Policy Act – NEPA – and significance factor 9).

As summarized the above, the above changes constitute a reversal of many long-held policies in previous refuge management which maximized protection of fragile wetlands habitat and wildlife. The EA as written has not provided a coherent and legally adequate explanation for why these many policy reversals – which are already known to have negative impacts on wildlife and habitat - are being made. According to the determination of incompatibility of airboat use in the preserve quoted above, the purpose of the refuge is described as follows:

“Establishing Authority: Migratory Bird Conservation Act of 1929

“Purpose(s) for which Established: For protection of migratory birds and their habitat as part of a major public works project built by the Corps of Engineers, and for the protection of this unique wetlands area. Later, the Endangered Species Act became important, and the arena was designated as critical habitat for the snail kite.”

In describing the purpose of the refuge, the EA itself provides the following background:

“According to the Fish and Wildlife Coordination Act, this Refuge

“...shall be administered by him (Secretary of the Interior) directly or in accordance with cooperative agreements...and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife, resources thereof, and its habitat thereon....” (16 USC § 664).

“The Migratory Bird Conservation Act of 1929 states that the Refuge is to be “....for use as an inviolate sanctuary, or for any other management purpose, for migratory birds.” (16 USC. § 715d).

“This purpose and the mission of the NWRS is fundamental to determining the compatibility of proposed uses of the Refuge.”

Thus, providing a safe haven for migratory birds and other wildlife were the reasons the refuge was first established – and compatibility with that purpose is the measuring stick by which all recreational uses are to be examined. Many of the proposed changes in this VSP will have negative impacts on both wildlife and habitat (some more and some less) – and thus appear to be inconsistent with the purpose for which the refuge was established. The previous incompatibility determination with regard to airboats was a great example of how consistency with the refuge’s purpose was utilized to bring refuge management into compliance with its purpose.

In this case, something else appears to be happening. Throughout this process, numerous statements have been made about the need or desirability of providing the public with access to a broad spectrum of “wildlife related recreation.” As stated in the EA:

“The purpose of the visitor services program is to connect visitors with the Refuge’s fish, wildlife, plants, and their habitats through safe, high quality, appropriate, and compatible wildlife- dependent recreational and educational programs and activities. This VSP was prepared based upon these guidelines.”

Providing visitors access to the “Big 6” (fishing, hunting, wildlife photography, wildlife observation, environmental education, and wildlife interpretation) has often been stressed:

From the EA:

“Activities that are dependent on wildlife, known as the Big 6 priority public uses—fishing, hunting, wildlife photography, wildlife observation, environmental education, and wildlife interpretation are considered appropriate activities on national wildlife refuges under the National Wildlife Refuge Improvement Act of 1997. All proposed public use options (Figure 2) support Big 6 activities and include non-Big 6 activities such as expanding Refuge hours, updating signs, kiosks, and Refuge brochures, restructuring fees, establishing additional access points along perimeter canals, and expanding areas of motorized (including airboats) and non-motorized access.”

But the “Big 6” is not the purpose of this refuge or any other refuge. There is no other National Wildlife Refuge in the system which protects this particular mix of wildlife on remnant Northern Everglades. The National Wildlife Refuge Improvement Act cited above provides no obligation whatsoever that any of the Big 6 be allowed on any National Wildlife Refuge. As stated clearly in this FWS website dealing with the subject of hunting on refuges:

<https://www.fws.gov/refuges/hunting/why-hunting-is-allowed-on-refuges/>

“The decision to permit hunting on national wildlife refuges is made on a case-by-case basis. Considerations include biological soundness, economic feasibility, effects on other refuge programs and public demand.”

Thus, the Big 6 cannot be used as justification for any particular use. Rather the purpose of this refuge, the proper protection and management of rare species and habitat must receive overarching consideration in this VSP.

We would also make a final point regarding the “range of reasonable alternatives” required by NEPA. It appears that the FWS took an “all or nothing” approach to this EA – comparing a full suite of changes providing greater physical and temporal access to the refuge as well as the type of activities that can take place to a “no action” alternative. A full spectrum of alternatives could have included at least one with smaller changes than the ones listed above – focusing on those likely to have the least impact on wildlife, habitat, the soundscape, and the experience of the refuge for existing users.

Thank you for your consideration of these comments,

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