available in the docket where located under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record-keeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.1185, to read as follows:

§ 165.1185 Regulated Navigation Area; San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters in California.

(a) *Location.* All waters of San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters in California are a Regulated Navigation Area.

(b) *Definitions.* ''Liquefied hazardous gas (LHG)'' is a liquid containing one or more of the products listed in Table 127.005 of 33 CFR 127.005 that is carried in bulk on board a tank vessel as a liquefied gas product. The hazards normally associated with these products include toxic or flammable properties or a combination of both.

(c) *Regulations.* All vessels loaded with a cargo of liquefied hazardous gas (LHG) within this Regulated Navigation Area must proceed directly to their intended cargo reception facility to discharge their LHG cargo, unless:

(1) The vessel is otherwise directed or permitted by the Captain of the Port. The Captain of the Port can be reached at telephone number (415) 399–3547 or on VHF–FM channel 16 (156.8 MHz). If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(2) The vessel is in an emergency situation and unable to proceed as directed in paragraph (a) of this section without endangering the safety of persons, property, or the environment.

Dated: May 17, 2004.

Kevin J. Eldridge,

Rear Admiral, U.S. Coast Guard, District Commander, Eleventh Coast Guard District.

[FR Doc. 04–12008 Filed 5–26–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD00

Amistad National Recreation Area, Personal Watercraft Use

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule designates areas where personal watercraft (PWC) may be used in Amistad National Recreation Area, Texas. This rule implements the provisions of the National Park Service (NPS) general regulations authorizing park areas to allow the use of PWC by promulgating a special regulation. The NPS Management Policies 2001 directs individual parks to determine whether PWC use is appropriate for a specific park area based on an evaluation of that area's enabling legislation, resources and values, other visitor uses, and overall management objectives.

EFFECTIVE DATE: This rule is effective May 27, 2004.

ADDRESSES: Mail inquiries to the Superintendent, Amistad National Recreation Area, HRC 3 Box 5J, Del Rio, Texas 78840 or e-mail to *amis@den.nps.gov.*

FOR FURTHER INFORMATION CONTACT: Kym Hall, Special Assistant, National Park Service, 1849 C Street, NW., Room 3145, Washington, DC 20240. Phone: (202) 208–4206. E-mail: *Kym_Hall@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

Personal Watercraft Regulation

On March 21, 2000, the National Park Service published a regulation (36 CFR 3.24) on the management of personal watercraft (PWC) use within all units of the national park system (65 FR 15077). This regulation prohibits PWC use in all national park units unless the NPS determines that this type of water-based recreational activity is appropriate for the specific park unit based on the legislation establishing that park, the park's resources and values, other visitor uses of the area, and overall management objectives. The regulation banned PWC use in all park units effective April 20, 2000, except that a grace period was provided for 21 lakeshores, seashores, and recreation areas. The regulation established a 2-year grace period following the final rule publication to provide these 21 park units time to consider whether PWC use should be allowed.

Description of Amistad National Recreation Area

Amistad National Recreation Area lies along the United States-Mexico border near Del Rio, Texas. The unit consists of 57,292 acres of land and water and is a man-made reservoir resulting from the construction of a dam at the confluence of Devils River and the Rio Grande. The reservoir is 1,117 feet above sea level at the normal conservation level, and the park boundary continues 83 miles northwest up the Rio Grande, 25 miles north up the Devils River, and 14 miles north up the Pecos River. The park boundary varies but is generally at the elevation mark of 1,144.3 feet above mean sea level, and the lake level fluctuates in relation to this. The international boundary between the United States and Mexico falls in the middle of the Rio Grande River. The International Boundary and Water Commission has placed buoys in the center of the channel for the first 28 miles but the reservoir is otherwise unmarked. The Mexico side of the reservoir does not have any protected status, thus the NPS does not generally consult with Mexican officials on matters such as boating management in a formal sense.

Amistad is home to a rich archeological record and world-class rock art. Within or immediately adjacent to park boundaries are four archeological districts and one site listed on the National Register of Historical Places.

Amistad National Recreation Area supports a wide variety of boating activities throughout the year, including PWC use, powerboating, waterskiing, houseboating, boat fishing, sightseeing by vessel, sailboating, sailboarding, canoeing, and kayaking. Amistad receives over 1,000,000 visitors a year and issues approximately 5,000 lake use permits annually.

Purpose of Amistad National Recreation Area

The purpose of Amistad National Recreation Area is to provide visitors and neighbors with opportunities and resources for safe, high-quality public outdoor recreation and use of Lake Amistad; to develop and maintain facilities necessary for the care and accommodation of visitors; and to support the concepts of stewardship and protection of resources and environmental sustainability by practicing and interpreting their application in a unit of the national park system.

Significance of Amistad National Recreation Area

According to Amistad's 2001–2005 strategic plan, the primary significance of Amistad National Recreation Area can be summarized as: (1) Offering diverse water-based recreational opportunities, especially fishing; (2) interpreting exceptional examples of Lower Pecos archeology and rock art and; (3) commemorating a water conservation partnership between the United States and Mexico.

Authority and Jurisdiction

Under the National Park Service's Organic Act of 1916 (Organic Act) (16 U.S.C. 1 *et seq.*) Congress granted the NPS broad authority to regulate the use of the Federal areas known as national parks. In addition, the Organic Act (16 U.S.C. 3) allows the NPS, through the Secretary of the Interior, to ''make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks * * *''

16 U.S.C. 1a–1 states, ''The authorization of activities shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established * * *''

NPS's regulatory authority over waters subject to the jurisdiction of the United States, including navigable waters and areas within their ordinary reach—as with the United States Coast Guard—is based upon the Commerce Clause of the U.S. Constitution. Additionally, NPS's regulatory authority over non-navigable waters administered by the NPS, is derived from the Property Clause. In regard to the NPS, Congress in 1976 directed the NPS to ''promulgate and enforce regulations concerning boating and other activities on or relating to waters within areas of the National Park System, including waters subject to the jurisdiction of the United States * * *'' (16 U.S.C. 1a–2(h)). In 1996 the NPS published a final rule (61 FR 35136, July 5, 1996) amending 36 CFR 1.2(a)(3) to clarify its authority to regulate activities within the National Park System boundaries occurring on waters subject to the jurisdiction of the United States.

PWC Use at Amistad National Recreation Area

The park began regularly documenting PWC use on July 4, 1992, but the earliest record is from March 1989, when a violation notice was issued to an operator for reckless and negligent behavior near a swim beach. PWC use became more common between 1990–91, and in May 2001 park staff began collecting more specific PWC use data. The highest use generally occurs in summer from Friday through Sunday, and in 2001 ranged from as low as 1 PWC per day up to 35 per day. Park staff believes that PWC use is increasing at approximately 1.5% per year.

Data collected during 2001 and 2002 show that PWC users are a consistent part of the total boating population of the lake, and holidays show the highest amount of use. The highest PWC-use weekday was Wednesday, July 4, 2001 (a holiday), when 33 PWC trailers were observed parked at boat ramp parking lots throughout the recreation area. On that same day, 88 non-PWC boat trailers were observed in the same parking lots.

The highest use for a non-holiday weekend occurred on Saturday, June 23, 2001, when 26 PWC trailers were observed in parking lots throughout the recreation area, compared to 270 non-PWC boat trailers in the same parking lots. Visitors were attracted by the 12 largemouth black bass tournaments taking place at the lake that day and the pleasant weather conditions (bass tournaments occur every weekend during the summer). The highest holiday weekend use day was Sunday, May 26, 2002, when 38 PWC trailers (and 296 non-PWC boat trailers) were observed at launch ramps.

On busy summer weekends, PWC use can comprise between 8% and 20% of total boating activity. On summer weekdays this percentage tends to increase due to fewer out-of-town bass tournament fishermen on the lake. PWC use on summer weekdays can comprise between 19% and 40% of total boating activity in the evenings after 6:30 p.m., when local PWC owners visit the lake after work.

PWC use occurs primarily between May and September, with April and October also showing steady visitation. Weekday PWC users are primarily local residents who arrive after work, while weekend users come from areas farther away. PWC users are usually on the water all day on weekends. Park staff has indicated that PWC users generally operate for two to three hours on weekday evenings, and from four to eight hours on weekends. The increased amount of time in the water can be attributed to users taking turns riding one craft.

PWC operators have been observed traveling throughout the lake, either singly, in pairs, in small groups, or in association with a motorized vessel or houseboat. Within Amistad National Recreation Area, PWC use has been allowed wherever motorized vessels have had access. This includes the arm of the Rio Grande, the Devils River, San Pedro Canyon, and the Pecos River.

Areas of heaviest PWC use are Devils River north of buoy P and San Pedro Canyon east of buoy A. Most of the personal watercraft launching from Rough Canyon travel up Devils River. In addition, many personal watercraft launching from Diablo East and Spur 454 travel up Devils River past buoy P. In contrast, only one or two personal watercraft travel up the Rio Grande past buoy 28. No PWC have been seen using the Pecos River.

The San Pedro arm of the lake (at the end of Spur 454) attracts a large number of PWC operators because it is one of the few areas where bystanders, usually friends and relatives of the PWC operators, can drive close to the shoreline to observe PWC activity or take turns riding. As a result, this location is one of the primary destinations for PWC operators. Another popular destination for PWC operators is the Indian Springs area in the upper Devils River section of the lake. While en route to Indian Springs, PWC operators tend to either travel in a direct line or explore some or all of the coves between their launch and destination points.

People who rent the 56- to 65-foot houseboats from Amistad Lake Marina often tow personal watercraft with the houseboat (two or three personal watercraft have been observed being towed). The vessels are permitted to travel to most areas, so PWC use is dispersed. These tagalongs are the only personal watercraft likely to use the upper Rio Grande area (north of buoy 28).

Notice of Proposed Rulemaking and Environmental Assessment

On October 22, 2003, the National Park Service published a Notice of Proposed Rulemaking (NPRM) for the operation of PWC at Amistad National Recreation Area (NRA) (68 FR 60304). The proposed rule for PWC use was based on alternative A in the Environmental Assessment (EA) prepared by NPS for Amistad NRA. The EA was available for public review and comment from April 3 to May 3, 2003, and the NPRM was available for public comment from October 22 to December 22, 2003.

The purpose of the environmental assessment was to evaluate a range of alternatives and strategies for the management of PWC use at Amistad to ensure the protection of park resources and values while offering recreational opportunities as provided for in the National Recreation Area's enabling

legislation, purpose, mission, and goals. The analysis assumed alternatives would be implemented beginning in 2002 and considered a 10-year period, from 2002 to 2012.

The environmental assessment evaluated three alternatives concerning the use of personal watercraft at Amistad National Recreation Area. Alternative A allows PWC use under an NPS special regulation in accordance with past park practices, and State regulations. That is, after the effective date of a final rule, PWC use would be the same as it was before November 7, 2002 when the park closed to PWC use under the service-wide regulations at 36 CFR 3.24. Alternative B continues PWC use under a special regulation, but specific limits and use areas would be defined. The no action alternative eliminates PWC use entirely within this national park system unit.

Based on the environmental analysis prepared for PWC use at Amistad National Recreation Area, alternative A is the preferred alternative and is also considered the environmentally preferred alternative because it best fulfills park responsibilities as trustee of this sensitive habitat; ensure safe, healthful, productive, and aesthetically and culturally pleasing surroundings; and attain a wider range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences.

Summary of Comments

A proposed rule was published for public comment on October 22, 2003, with the comment period lasting until December 22, 2003. The National Park Service received 737 timely written responses regarding the proposed regulation. Of the responses, 673 were form letters in 3 separate formats and 64 were separate letters. Of the 64 separate letters, 59 were from individuals, 4 from organizations, and 1 from a business. Within the following discussion, the term ''commenter'' refers to an individual, organization, or public agency that responded. The term ''comments'' refers to statements made by a commenter.

General Comments

1. One commenter stated that the Environmental Assessment (EA) was headed toward a predetermined outcome.

NPS Response: At no time has there been a predetermined outcome. The staff, in the preparation of the Environmental Assessment, went through the National Environmental Policy Act (NEPA) process—identified purpose, need, and objectives for taking action, conducted internal scoping, developed proposal, determined the appropriate pathway (Categorical Exemption (CE), EA, or Environmental Impact Statement (EIS)), and conducted public scoping through mailings.

If the EA process had discovered significant impacts from PWC use at Amistad, then an EIS would have been prepared. In addition, if the NPS had concluded that the impacts of PWC use of Amistad NRA were inappropriate based on the area's enabling legislation, resources and values, other visitor uses, and overall management objectives then NPS would have determined a different course of action. To the contrary the impacts discovered during the EA process revealed no significant reasons for not moving forward with the preferred alternative.

2. Several commenters stated that PWC should not be singled out for analysis and restriction.

NPS Response: The Environmental Assessment was not designed to determine if personal watercraft caused more environmental damage to park resources than other vessels, but rather to determine if personal watercraft use was consistent with the park's enabling legislation and otherwise apprpriate. The NPS evaluated and chose the preferred alternative as the best regulatory approach in order to maintain the opportunities for various types of recreation while protecting the resources of Amistad National Recreation Area.

3. One commenter stated that the EA failed to use the best available data for the analysis and picked Alternative A without adequate scientific justification.

NPS Response: NPS believes it has properly assessed the impacts of personal watercraft on the resources of Amistad National Recreation Area using the best available data for the analysis. This analysis was done for every applicable impact topic consistent with the Council on Environmental Quality regulations (40 CFR 1502.22). Where data was lacking, best professional judgment prevailed using assumptions and extrapolations from scientific literature, other park units where personal watercraft are used, and personal observations of park staff.

The NPS believes that the environmental assessment is in full compliance with the National Environmental Policy Act, and the Finding of No Significant Impact (FONSI) demonstrates that decision has been adequately analyzed and explained.

4. One commenter stated that the NPS did not consult with and seek the expertise of various agencies, which appears to violate the NPS' PWC regulations.

NPS Response: The final PWC regulation published by the NPS in March 2000 indicates that we intend to seek the expertise of the U.S. Environmental Protection Agency (EPA), OSHA and other relevant agencies and literature when deciding whether to allow continued PWC use in units of the National Park System. The Environmental Assessment references EPA and OSHA regulations and studies throughout. For example, the U.S. Environmental Protection Agency (EPA) website and the Texas Natural Resources Conservation Commission website were visited and Amistad information was retrieved for both air quality and water quality.

Phone calls were made or letters were sent to other Federal, State, local agencies including U.S. Fish and Wildlife, Texas Parks and Wildlife, Bureau of Reclamation, Texas Commission on Environmental Quality (the State agency charged with application of EPA regulations in Texas), International Boundary and Water Commission, Texas Archeology Society, and the U.S. Coast Guard. The EA was distributed to those listed on pages 156–158 of the EA. We feel we have conducted consultation as required by various Acts and Executive Orders as well as the intent of the March 2000 PWC regulations.

5. One commenter expressed concern about the use of Federal Aid in Sport Fish Restoration Act (FASFRA) funds to construct boat launches and facilities.

NPS Response: There are no provisions within the preferred alternative for boat launches and facilities. Landing zones are designated by the NPS for access only by PWC users. No FASFRA funds are used within the national recreation area to construct boat launches.

6. Several commenters stated that the decision violates the Organic Act and will result in the impairment of resources.

NPS Response: The ''Summary of Laws and Policies'' section in the ''Environmental Consequences'' chapter of the PWC Use EA summarizes the three overarching laws that guide the National Park Service in making decisions concerning protection of park resources. These laws, as well as others, are also reflected in the NPS Management Policies. An explanation of how the Park Service applied these laws and policies to analyze the effects of personal watercraft on Amistad Recreation Area resources and values can be found under ''Impairment

Analysis'' in the ''Methodology'' section.

An impairment is an impact that, in the professional judgement of the NPS manager, would harm the integrity of park resources or values. In the analysis used in the PWC Use EA, an impairment to a particular park resource or park value must rise to the magnitude of a major impact, as defined by factors such as context, duration, and intensity. For each resource topic, the Environmental Assessment establishes thresholds or indicators of magnitude of impact. An impact approaching a ''major'' level of intensity is one indication that impairment could result. For each impact topic, when the intensity approached ''major,'' the park would consider mitigation measures to reduce the potential for ''major'' impacts, thus reducing the potential for impairment.

The PWC Use EA is a proactive measure to protect national recreation area resources from harm. The purpose of the EA is to assess the impacts of PWC use on identified resources within the recreation area boundaries. The National Park Service has determined that under the preferred alternative, Alternative A, there will be no negative impacts on park resources or values.

7. One commenter stated that the analysis lack site-specific data and there was no adequate justification for why the data was not collected.

NPS Response: NPS believes it has properly assessed the impacts of personal watercraft on the resources of Amistad National Recreation Area using the best available data for the analysis. This analysis was done for every applicable impact topic consistent with the Council on Environmental Quality regulations (40 CFR 1502.22). Where data was lacking, best professional judgment prevailed using assumptions and extrapolations from scientific literature, other park units where personal watercraft are used, and personal observations of park staff.

The NPS believes that the environmental assessment is in full compliance with the National Environmental Policy Act, and the Finding of No Significant Impact (FONSI) demonstrates that decision has been adequately analyzed and explained.

8. One commenter stated that the analysis did not adequately examine impacts to resources outside of Amistad and therefore failed to conduct a thorough and accurate analysis of the impact PWC pollution has on NRA resources.

NPS Response: Under NEPA, an Environmental Assessment must look at the cumulative impacts of any proposed action in a regional context. On page 21 of the EA is a list of past, present and reasonably foreseeable future actions used to assess PWC contributions to overall impacts on a resource. The EA reviewed regional plans and developed a cumulative impacts analysis that is required under NEPA.

Comments Regarding Water Quality

9. One commenter stated that the analysis represents an outdated look at potential emissions from an overstated PWC population of conventional two-stroke engines, and underestimated the accelerating changeover to 4-stroke and newer two-stroke engines. The net effect is that the analysis overestimates potential PWC hydrocarbon emissions, including benzene and polycyclic aromatic hydrocarbons (PAHs), to the water at Amistad.

NPS Response: Assumptions regarding PWC use (32 per day in 2002 and 37 per day in 2012) were based on the average from the 6 highest use days May 2001 to July 2002 (EA page 90). The data can be considered a conservative estimate, but it is not ''unrealistic'' since it based on actual Amistad data. Despite these conservative estimates, impacts to water quality from personal watercraft are judged to be negligible to moderate for all alternatives evaluated. Cumulative impacts from personal watercraft and other outboard motorboats are expected to be negligible. If the assumptions used were less than conservative, the conclusions could not be considered protective of the environment, while still being within the range of expected use.

The assumption of all personal watercraft using 2-stroke engines in 2002 is recognized as conservative. It is protective of the environment yet follows the emission data available in CARB (1998) and Bluewater Network (2001) at the time of preparation of the EA. The emission rate of 3 gallons per hour at full throttle is a mid-point between 3 gallons in two hours (1.5 gallons per hour; NPS 1999) and 3.8 to 4.5 gallons per hour for an average 2000 model year personal watercraft (Personal Watercraft and Bluewater Network 2001). The assumption also is reasonable in view of the initiation of production line testing in 2000 (EPA 1997) and expected full implementation of testing by 2006 (EPA 1996).

Reductions in emissions used in the water quality impact assessment are in accordance with the overall hydrocarbon emission reduction projections published by the EPA (1996). EPA (1996) estimates a 52% reduction by personal watercraft by 2010 and a 68% reduction by 2015. The 50% reduction in emissions by 2012 (the future date used in the EA) is a conservative interpolation of the emission reduction percentages and associated years (2010 and 2015) reported by the EPA (1996) but with a one-year delay in production line testing (EPA 1997).

The estimate of 2.8 mg/kg for benzo(a)pyrene in gasoline used in the calculations is considered conservative, yet realistic, since it is within the range of concentrations measured in gasoline according to Gustafson *et al.* (1997).

10. One commenter stated that the analysis disregarded or overlooked relevant research regarding impacts to water quality from PWC use as well as the impact to downstream resources and long term site specific water quality data on PWC pollutants.

NPS Response: The protection of water quality within the national recreation area has been addressed in the EA in a conservative evaluation of surface water quality impacts. Because site-specific water quality data on organic compounds were not available for Amistad and collection of these data was beyond the scope of the EA, a conservative modeling approach was developed and applied to evaluate impacts to water quality from PWC and other motorized vessel use.

Estimated minimum threshold volumes of water were determined for the PWC use areas where concentrations of gasoline constituents discharged from personal watercraft and other outboard engines could potentially be toxic to aquatic organisms or humans. Using the estimated threshold volumes, volumes of the areas being evaluated, PWC and other motorized vessel high-use-day loadings of chemicals identified as constituents of gasoline, and water quality benchmarks, it is possible to identify potentially unacceptable impacts to human health or the environment. Chronic water quality benchmarks protective of aquatic populations and protective of human health were acquired from various sources, including USEPA water quality criteria.

The EA states that in 2002 under both Alternatives A and B, impacts to water quality in Amistad from PWCs on a high-use day would be negligible for all chemicals evaluated based on ecological benchmarks and human health benchmarks. In 2012, impacts would also be negligible based on all ecological and human health benchmarks. ''Impairment'' is clearly defined in the EA on page 91 and is the most severe of the five potential impact categories. The other impact categories starting

with the least severe are: negligible, minor, moderate, and major.

Comments Regarding Air Quality

11. One commenter stated that the analysis failed to mention the impact of PWC permeation losses on local air quality.

NPS Response: Permeation losses of VOCs from personal watercraft were not included in the calculation of air quality impacts primarily because these losses are insignificant relative to emissions from operating watercraft. Using the permeation loss numbers in the comment (estimated to be half the total of 7 grams of losses per 24 hours from the fuel system), the permeation losses per hour from are orders of magnitude less than emissions from operating personal watercraft. Therefore, including permeation losses would have no effect on the results of the air quality impact analyses. Also, permeation losses were not included because of numerous related unknown contributing factors such as number of number of personal watercraft refueling at the reservoir and the location of refueling (inside or outside of the airshed).

12. One commenter stated that the use of air quality data collected at Laredo, 150 miles from the NRA, in the analysis does not provide the best representation of air quality at the lake.

NPS Response: The Laredo monitoring station is the closest air quality monitoring site to the study area. The data from this site were discussed in the EA; however, these data were not used in the impact analysis. The analysis was based on the results of an EPA air emission model, which used estimated PWC and vessel usage at Amistad as inputs.

As stated above, the methodology for assessing air quality impacts was based on a combination of annual emission levels and the National Ambient Air Quality Standards (NAAQS), which are aimed at protection of the public. OSHA and NIOSH standards are intended primarily for workers and others exposed to airborne chemicals for specific time periods. The OSHA and NIOSH standards are not as suitable for application in the context of local and regional analysis of a park or recreational area as are the ambient standards, nor are they intended to protect the general public from exposure to pollutants in ambient air.

13. One commenter stated that the analysis failed to consider that the PWC companies have been rapidly converting from carbureted two-stroke engine models to direct injection two-stroke and four-stroke engine models and most PWC produced will meet the more stringent California Air Resources Board (CARB) standards over time.

NPS Response: Assumptions regarding PWC use (32 per day in 2002 and 37 per day in 2012) were based on the average from the 6 highest use days May 2001 to July 2002 (EA page 90). The data can be considered a conservative estimate, but it is not ''unrealistic'' since it is based on actual Amistad data. Despite these conservative estimates, impacts to water quality from personal watercraft are judged to be negligible to moderate for all alternatives evaluated. Cumulative impacts from personal watercraft and other outboard motorboats are expected to be negligible. If the assumptions used were less than conservative, the conclusions could not be considered protective of the environment, while still being within the range of expected use.

The assumption of all personal watercraft using 2-stroke engines in 2002 is recognized as conservative. It is protective of the environment yet follows the emission data available in CARB (1998) and Bluewater Network (2001) at the time of preparation of the EA. The emission rate of 3 gallons per hour at full throttle is a mid-point between 3 gallons in two hours (1.5 gallons per hour; NPS 1999) and 3.8 to 4.5 gallons per hour for an average 2000 model year personal watercraft (Personal Watercraft and Bluewater Network 2001). The assumption also is reasonable in view of the initiation of production line testing in 2000 (EPA 1997) and expected full implementation of testing by 2006 (EPA 1996).

Reductions in emissions used in the water quality impact assessment are in accordance with the overall hydrocarbon emission reduction projections published by the EPA (1996). EPA (1996) estimates a 52% reduction by personal watercraft by 2010 and a 68% reduction by 2015. The 50% reduction in emissions by 2012 (the future date used in the EA) is a conservative interpolation of the emission reduction percentages and associated years (2010 and 2015) reported by the EPA (1996) but with a one-year delay in production line testing (EPA 1997).

The estimate of 2.8 mg/kg for benzo(a)pyrene in gasoline used in the calculations is considered conservative, yet realistic, since it is within the range of concentrations measured in gasoline according to Gustafson *et al.* (1997).

14. One commenter expressed concern that PWC emissions were declining faster than forecasted by the EPA. As the Sierra Report documents, in 2002, HC + NO_X emissions from the existing fleet of PWC were already 23% lower than they were before the EPA regulations became effective, and will achieve reductions greater than 80% by 2012.

NPS Response: The U.S. EPA's data incorporated into the 1996 Spark Ignition Marine Engine rule were used as the basis for the assessment of air quality, and not the Sierra Research data. It is agreed that the Sierra Research data show a greater rate of emissions reductions than the assumptions in the 1996 Rule and in the EPA's NONROAD Model, which was used to estimate emissions. However, the Sierra Research report has not been used in the EA for reasons of consistency and conformance with the model predictions. Most States use the EPA's NONROAD Model for estimating emissions from a broad array of mobile sources. To provide consistency with State programs and with the methods of analysis used for other similar NPS assessments, the NPS has elected not to base its analysis on focused research such as the Sierra Report for assessing PWC impacts.

It is agreed that the Sierra Research report also provides data on ''worst case'' scenarios. However worst case or short-term scenarios were not analyzed for air quality impacts in this or other NPS EAs.

It is agreed that the relative quantity of HC + NO_X are a very small proportion of the county based emissions and that this proportion will continue to be reduced over time. The EA takes this finding into consideration in the analysis.

Improved PWCs may be used in increasing numbers; however the data of overall use of this engine type nationwide is not well established. For consistency and conformity in approach, the NPS has elected to rely on the assumptions in the 1996 S.I Engine Rule which are consistent with the widely used NONROAD emissions estimation Model. The outcome is that estimated emissions from combusted fuel may be in the conservative range, if compared to actual emissions.

15. Several commenters stated that research indicated that direct-injection two-stroke engines are dirtier than four-stroke engines.

NPS Response: It is agreed that two-stroke carbureted and two-stroke DI engines generally emit greater amounts of pollutants than four-stroke engines. Only 4 of the 20 PAHs included in the analyses were detected in water: Naphthalene, 2-methylnaphthalene, fluorene, and acenaphthylene. The discussion of toxicity of PAHs in the comment must be from another (unreferenced) document since this

discussion was not found in CARB (2001). It is agreed that some pollutants (BTEX and formaldehyde) were reported by CARB in the test tanks after 24 hours at approximately 50% the concentrations seen immediately following the test. No results for PAH concentrations after 24 hours were seen in the CARB (2001) results, but a discussion of sampling/analyses of PAHs in the six environmental compartments was presented.

EPA NONROAD model factors differ from those of CARB. As a result of the EPA rule requiring the manufacturing of cleaner PWC engines, the existing carbureted two-stroke PWC will, over time, be replaced with either two-stroke direct injection or 4-stroke PWCs and both are less-polluting engines. This replacement, with the anticipated resultant improvement in air quality, is parallel to that experienced in urban environments as the automobile fleet becomes cleaner over time.

16. One commenter stated that the use of the study by Kado, et. al. to suggest that the changeover from two-stroke carbureted to two-stroke direct injection engines may increase emissions of polycyclic aromatic hydrocarbons (''PAH'') is in error.

NPS Response: The criteria for analysis of impacts from PWC to human health are based on the National Ambient Air Quality Standards (NAAQSs) for criteria pollutants, as established by the U.S. Environmental Protection Agency (EPA) under the Clean Air Act, and on criteria pollutant annual emission levels. This methodology was selected to assess air quality impacts for all NPS EAs to promote regional and national consistency, and identify areas of potential ambient standard exceedances. PAHs are not assessed specifically as they are not a criteria pollutant. However, they are indirectly included as a subset of Total Hydrocarbons (THC), which are assessed because they are the focus of the EPA's emissions standards directed at manufacturers of spark ignition marine gasoline engines (see 61 FR 52088; October 4, 1996). Neither peak exposure levels nor NIOSH nor OSHA standards are included as criteria for analyzing air quality related impacts, except where short-term exposure is included in a NAAQS.

As stated above, the methodology for assessing air quality impacts was based on a combination of annual emission levels and the NAAQSs, which are aimed at protection of the public. OSHA and NIOSH standards are intended primarily for workers and others exposed to airborne chemicals for specific time periods. The OSHA and NIOSH standards are not as suitable for application in the context of local and regional analysis of a park or recreational area as are the ambient standards, nor are they intended to protect the general public from exposure to pollutants in ambient air.

The ''Kado Study'' (Kado *et al.* 2000) presented the outboard engine air quality portion of a larger study described in Outboard Engine and Personal Watercraft Emissions to Air and Water: A Laboratory Study (CARB 2001). In the CARB report, results from both outboards and personal watercraft (two-stroke and 4-stroke) were reported. The general pattern of emissions to air and water shown in CARB (2001) was two-stroke carbureted outboards and personal watercraft having the highest emissions, and 4-stroke outboard and personal watercraft having the lowest emissions. The only substantive exception to this pattern was in NO_X emissions to air—two-stroke carbureted outboards and personal watercraft had the lowest NO_X emissions, while the 4-stroke outboard had the highest emissions. Therefore, the pattern of emissions for outboards is generally applicable to personal watercraft and applicable to outboards directly under the cumulative impacts evaluations.

We agree with the technical statement and summation that adverse health risk to the public would be unlikely from exposure. The methodology for assessing air quality impacts is based on a combination of annual emission levels and the NAAQSs, which are aimed at protection of the public. OSHA and NIOSH standards are intended primarily for workers and others exposed to airborne chemicals for specific time periods. The OSHA and NIOSH standards are not as suitable for application in the context of local and regional analysis of a park or recreational area as are the ambient standards, nor are they intended to protect the general public from exposure to pollutants in ambient air.

Comments Regarding Soundscapes

17. One commenter stated that continued PWC use in the Amistad NRA will not result in sound emissions that exceed the applicable Federal or State noise abatement standards and technological innovations by the PWC companies will continue to result in substantial noise reductions.

NPS Response: The NPS concurs that on-going and future improvements in engine technology and design would likely further reduce the noise emitted from PWC. However, given the ambient noise levels in the recreation area, it is unlikely that the improved technology could reduce all cumulative impacts beyond minor to moderate throughout the recreation area.

18. One commenter stated that there is no evidence that PWC noise adversely affects aquatic fauna or animals.

NPS Response: Typically PWC exhaust below or at the air/water transition areas, not above the water. Sound transmitted through the water is not expected to have more than negligible adverse impacts on fish (page 118 of the EA), and the EA does not state the PWC noise adversely affects underwater fauna.

19. One commenter stated that the NPS places too much hope in new technologies significantly reducing PWC noise, since there is little possibility that the existing fleet of more than 1.1 million machines (most of which are powered by conventional two-stroke engines) will be retooled to reduce noise.

NPS Response: The analysis of the preferred alternative states that noise from PWC would continue to have minor to moderate, temporary adverse impacts, and that impact levels would be related to the number of PWC and sensitivity of other visitors. This recognizes that noise will occur and will bother some visitors, but site-specific modeling was not needed to make this assessment. The availability of noise reduction technologies is also growing, and we are not aware of any scientific studies that show these technologies do not reduce engine noise levels. Also, the analysis did not rely heavily on any noise reduction technology. It recognizes that the noise from the operation of PWC will always vary, depending on the speed, manner of use, and wave action present.

Although PWC use does occur throughout the lake, it is concentrated more in certain areas, and this is noted in the soundscapes impact analysis that follows the introductory statements and assumptions listed on page 109 of the EA. The analysis of impacts states that ''The distribution of personal watercraft during peak summer days would range between 16 to 18 at Diablo East, 7 to 8 at Rough Canyon, 5 to 6 at Spur 454, 3 to 4 at South Winds Marina, and 1 to 2 at Box Canyon.'' The analysis did not assume even distribution of PWC and predicted moderate impacts from concentrated PWC use in one area.

The noise annoyance costs in the ''Drowning in Noise'' study are recognized in the EA by the moderate impacts predicted, although no monetary costs are assigned. These costs would vary by type and location of user. Given the intended usage of the higher use marina/beach areas of Amistad and

visitor expectations and tolerances at these areas, it is unlikely that the PWC noise experienced there would meet the definition of ''major'' impact, as defined in the EA.

20. One commenter stated that there is a big difference in both actual noise and perceived noise from PWC than that from other motorized watercraft in that PWCs repeatedly leave the water, which magnifies noise. This constantly changing noise is often perceived as more disturbing than the constant noise from motorized vessels.

NPS Response: The noise levels of two PWC traveling together would be less than the NPS noise limit of 82 dB at 82 feet for all alternatives. Given that ambient sound levels range from 34 dBA to 50 dBA in the recreation area, the operation of PWC 50 feet from shore would still have minor adverse affects on the soundscape. In most locations natural sounds would prevail and motorized noise would be very infrequent or absent.

21. Two commenters stated that the analysis relied on new technologies proposed by the PWC industry for future noise impacts.

NPS Response: The analysis did not assume that PWC noise would be substantially reduced in the future, although it does recognize the newer machines, and those powered by 4-stroke engines, are expected to be quieter. The analysis does take into account continued noise from PWC and an increase in PWC numbers over time.

22. One commenter stated that the noise associated with PWC is more invasive due to the constantly fluctuating noise levels.

NPS Response: The EA discusses the fluctuating noise aspect of PWC operation in the Affected Environment section (page 49 of the EA), under ''Responses to PWC Noise,'' and recognizes that the ''irregular noise seems to be more annoying than that of a standard motorboat'' to visitors. The analysis recognizes that different visitors will have different tolerance for PWC noise.

23. One commenter stated that the analysis did not include Drowning in Noise: Noise Costs of PWC in America and therefore the noise analysis under represents the actual impacts.

NPS Response: One of the initial tasks of the Amistad NRA study that is discussed in this Environmental Assessment and in previous responses was a literature search. Drowning in Noise: Noise Costs of Jet Skis in America was one of the many studies reviewed. The reference to that study (Komanoff and Shaw 2000) was discussed in the ''Summary of Available Research on the Effects of Personal Watercraft'' section of the EA.

Comments Regarding Wildlife and Wildlife Habitat

24. Two commenters stated that the analysis lacked site-specific data for impacts to fish, wildlife, and threatened and endangered species at Amistad NRA.

NPS Response: The scope of the EA did not include site specific studies regarding potential effects of PWC use on wildlife species at Amistad National Recreation Area. Analysis of potential impacts of PWC use on wildlife at the national recreation area was based on best available data, input from park staff, and the results of analysis using that data.

25. One commenter stated that PWC use and human activities associated with their use may not be any more disturbing to wildlife species than any other type of motorized or non-motorized vessels. The commenter cites research by Dr. James Rodgers of the Florida Fish and Wildlife Conservation Commission, whose studies have shown that PWC are no more likely to disturb wildlife than any other form of human interaction. PWC posed less of a disturbance than other vessel types. Dr. Rodgers' research clearly shows that there is no reason to differentiate PWC from motorized boating based on claims on wildlife disturbance.

NPS Response: Based on the documents provided as part of this comment, it appears that personal watercraft are no more apt to disturb wildlife than are small outboard motorboats. In addition to this conclusion, Dr. Rodgers recommends that buffer zones be established, creating minimum distances between vessels (personal watercraft and outboard motorboats) and nesting and foraging waterbirds. In Amistad, under the Texas Water Safety Act, a 50-ft wide area along the shoreline is already established where the use of watercraft is restricted to flat wake speed only. With this restriction in mind, impacts to wildlife and wildlife habitat under all three alternatives were judged to be negligible at most locations along the shoreline.

26. One commenter stated that wildlife biologists are finding that PWC cause lasting impacts on fish and wildlife.

NPS Response: It is anticipated that more combustion-efficient engines in personal watercraft will reduce pollutant emissions to air and water in the same manner as increased efficiencies in automobile engines combined with catalytic converters and other technologies decreased the amount and types of automobile exhaust emissions. EPA-sponsored evaluations of different personal watercraft engine designs and emissions concluded that emission reductions would result with implementation of the EPA emission standards for marine engines. The preferred alternative (Alternative A) provides protection of wildlife in the recreation area by prohibiting PWC from landing in areas with interior least tern nesting colonies from May 1 through August 31.

PAH toxicity to fish and wildlife species is a complicated topic because PAHs consist of dozens of different chemical compounds, each of which has substantially different toxicity characteristics in water, sediment, and soils, and toxicity varies dramatically among different fish and wildlife species. The ecological toxicity analysis for PAHs reported in the Environmental Assessment explains the chemical, physical, and biological conditions that were used to conduct the assessment of PAH effects to fish species.

Comments Regarding Visitor Use, Experience, and Safety

27. One commenter stated that the accident data used in the analysis was outdated and incorrect because PWC accidents are reported more often than other boating accidents.

NPS Response: The mediating factors described in the comment are recognized. However, these factors are unlikely to fully explain the large difference in percentages (personal watercraft are only 7.5% of registered vessels, yet they are involved in 36% of reported accidents). In other words, personal watercraft are 5 times more likely to have a reportable accident than are other vessels. This difference is even more significant when canoes and kayaks, which are not required to be registered but are included in the total number of accidents, are considered. Despite these national boating accident statistics, impacts of PWC use and visitor conflicts are judged to be negligible relative to swimmers and minor impact relative to other motorized vessels at the national recreation area.

28. One commenter stated that the analysis did not adequately address PWC fire hazards.

NPS Response: According to the National Marine Manufacturers Association, PWC manufacturers have sold roughly 1.2 million watercraft during the last ten years. Out of 1.2 million PWC sold the U.S. Coast Guard had only 90 reports of fires/explosions in the years from 1995–1999. This is less than 1% of PWC vessels having

reports of problems associated with fires/explosions. As far as the recall campaigns conducted by Kawasaki and Bombardier, the problems that were associated with fuel tanks were fixed. Kawasaki conducted a recall for potentially defective fuel filler necks and fuel tank outlet gaskets on 23,579 models from the years 1989 and 1990. The fuel tank problems were eliminated in Kawasaki's newer models, and the 1989 and 1990 models are most likely not in use anymore since life expectancy of a PWC is only five to seven years according to PWIA. Bombardier also did a recall for its 1993, 1994, and 1995 models to reassess possible fuel tank design flaws. However, the number of fuel tanks that had to be recalled was a very small percent of the 1993, 1994, and 1995 fleets because fuel tank sales only amounted to 2.16% of the total fleet during this period (Bombardier Inc.). The replacement fuel tanks differed from those installed in the personal watercraft subject to the recall in that the replacement tanks had revised filler neck radiuses, and the installation procedure now also requires revised torque specifications and the fuel system must successfully complete a pressure leak test. Bombardier found that the major factor contributing to PWC fires/explosions was over-torquing of the gear clamp. Bombardier was legally required by the U.S. Coast Guard to fix 9.72% of the recalled models. Out of 125,349 recalls, the company repaired 48,370 units, which was approximately 38% of the total recall, far exceeding their legal obligation to repair units with potential problems. Further fuel tank and engine problems that could be associated with PWC fires has been reduced significantly since the National Marine Manufacturers Association set requirements for meeting manufacturing regulations established by the U.S. Coast Guard. Many companies even choose to participate in the more stringent Certification Program administered by the National Marine Manufacturers Association (NMMA). The NMMA verifies annually, or whenever a new product is put on the market, vessel model lines to determine that they satisfy not only the U.S. Coast Guard Regulations but also the more rigorous standards based on those established by the American Boat and Yacht Council.

29. One commenter stated that the analysis did not address impacts to other park visitors.

NPS Response: Adverse impacts of PWC use on other boaters is discussed in the EA (page 141 of the EA) under ''PWC Users/Other Boater Conflicts,'' The impacts are expected to be minor to moderate adverse concentrated in the high use areas.

Comments Related to Cultural Resources

30. One commenter stated that the analysis refers to a potential concern that the ability of PWC operators to access remote areas of the park unit might make certain cultural, archeological and ethnographic sites vulnerable to looting or vandalism. However, there is no indication of any instances where these problems have occurred. Nor is there any reason to believe that PWC users are any more likely to pose these concerns than other park visitors who might access these same areas.

NPS Response: The EA was focused on the analysis of impacts from PWC use. PWC can make it easier to reach some remote upstream areas, compared to hiking to these areas, but we agree that the type of impacts to cultural resources from any users of remote areas of the park would be similar if they can reach these areas.

Comments Regarding Socioeconomics

31. One commenter stated that the analysis did not adequately assess socioeconomic impacts on the regional economy.

NPS Response: The number of recreational visits at Amistad National Recreation Area in calendar year 2000 was 1,234,506. In 2001 the recreational visits were 1,097,650, a reduction of 11%. The socioeconomic study did not address the future potential costs of environmental damage. The study looked at the potential effect that the ban would have on the local economy, and the potential effects on socio-economically disadvantaged groups. The comment is correct in stating that the same level of analysis was not given to the future environmental costs.

Changes to the Final Rule

Based on the preceding comments and responses, the NPS has made no changes to the proposed rule language with regard to PWC operations.

Summary of Economic Analysis

Alternative A would permit PWC use as previously managed within the park before the November 2002 ban in accordance with the Superintendent's compendium. Alternative A is the preferred alternative. Under this alternative, a special regulation would reinstate PWC use in Amistad National Recreation Area wherever motorized vessels are authorized, which includes PWCs. Alternative B would permit PWC use with additional management restrictions on PWC users and concessioners. Alternative C is the no-action alternative and represents the baseline conditions for this economic analysis. Under that alternative, the November 2002 ban would be continued. All benefits and costs associated with Alternatives A and B are measured relative to that baseline.

The primary beneficiaries of Alternatives A and B include the individuals who would use PWCs within the park and the businesses that provide services to PWC users such as rental shops, restaurants, gas stations, and hotels. Additional beneficiaries include the individuals who use PWCs in areas outside the park where PWC users displaced from the park by the ban may have increased their use. Over a ten-year horizon from 2003 to 2012, the present value of benefits to PWC users is expected to range between $1,394,600 and $1,890,700, depending on the alternative analyzed and the discount rate used. The present value of benefits to businesses over the same timeframe is expected to range between $20,300 and $199,900. These benefit estimates are presented in Table 1. The amortized values per year of these benefits over the ten-year timeframe are presented in Table 2.

TABLE 1.—PRESENT VALUE OF BENEFITS FOR PWC USE IN AMISTAD NATIONAL RECREATION AREA, 2003–2012 (2001 $) [a]

	PWC users	Businesses	Total
Alternative A:			
Discounted at 3%[b]	$1,890,700	$28,800 to $199,900	$1,919,500 to $2,090,600
Discounted at 7%[b]	$1,549,600	$23,600 to $163,800	$1,573,200 to $1,713,400
Alternative B:			
Discounted at 3%[b]	$1,701,600	$24,800 to $169,500	$1,726,400 to $1,871,100

TABLE 1.—PRESENT VALUE OF BENEFITS FOR PWC USE IN AMISTAD NATIONAL RECREATION AREA, 2003–2012 (2001 $) [a]

	PWC users	Businesses	Total
Discounted at 7%[b]	$1,394,600	$20,300 to $138,900	$1,414,900 to $1,533,500

[a] Benefits were rounded to the nearest hundred dollars, and may not sum to the indicated totals due to independent rounding.
[b] Office of Management and Budget Circular A–4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.

TABLE 2.—AMORTIZED TOTAL BENEFITS PER YEAR FOR PWC USE IN AMISTAD NATIONAL RECREATION AREA, 2003–2012 (2001 $)

	Amortized total benefits per year[a]
Alternative A:	
Discounted at 3%[b]	$225,024 to $245,082.
Discounted at 7%[b]	$223,988 to $243,950.
Alternative B:	
Discounted at 3%[b]	$202,387 to $219,350.
Discounted at 7%[b]	$201,450 to $218,336.

[a] This is the present value of total benefits reported in Table 1 amortized over the ten-year analysis timeframe at the indicated discount rate.
[b] Office of Management and Budget Circular A–4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.

The primary group that would incur costs under Alternatives A and B would be the park visitors who do not use PWCs and whose park experiences would be negatively affected by PWC use within the park. At Amistad National Recreation Area, non-PWC uses include boating, canoeing, fishing, and hiking. Additionally, the public could incur costs associated with impacts to aesthetics, ecosystem protection, human health and safety, congestion, nonuse values, and enforcement. However, these costs could not be quantified because of a lack of available data. Nevertheless, the magnitude of costs associated with PWC use would likely be greatest under Alternative A, and lower for Alternative B due to increasingly stringent restrictions on PWC use.

Because the costs of Alternatives A and B could not be quantified, the net benefits associated with those alternatives (benefits minus costs) also could not be quantified. While Alternative A would likely impose greater costs than Alternative B, it also would provide greater benefits as well. Given that, a quantification of the costs could reasonably result in Alternative A having the greatest level of net benefits.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The National Park Service has completed the report ''Economic Analysis of Management Alternatives for Personal Watercraft in Amistad National Recreation Area'' (MACTEC Engineering and Consulting, Inc. May 2004).

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies or controls. This rule is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does raise novel legal or policy issues. This rule is one of the special regulations being issued for managing PWC use in National Park Units. The National Park Service published general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use. The implementation of the requirement of the general regulation continues to generate interest and discussion from the public concerning the overall effect of authorizing PWC use and National Park Service policy and park management.

Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on a report entitled ''Economic Analysis of Management Alternatives for Personal Watercraft in Amistad National Recreation Area'' (MACTEC Engineering and Consulting, Inc., May 2004).

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.–based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or

unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and does not impose any other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule only affects use of NPS administered lands and waters. It has no outside effects on other areas by allowing PWC use in specific areas of the park.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB Form 83–I is not required.

National Environmental Policy Act

The National Park Service has analyzed this rule in accordance with the criteria of the National Environmental Policy Act and has prepared an Environmental Assessment (EA). The EA was available for public review and comment from April 9, 2003 to May 10, 2003. Additionally, a Finding of No Significant Impact (FONSI) was completed and signed on April 29, 2004. Copies of the environmental assessment and the FONSI may be downloaded at *http://www.nps.gov/amis/pwc. pdf* or obtained at park headquarters Monday through Friday, 8 a.m. to 5 p.m., just west of Del Rio at 4121 Hwy 90 W. Mail inquiries should be directed to: Amistad National Recreation Area, HCR 3 Box 5J, Del Rio, TX 78840, Phone (830) 775–7491.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government to Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. There are 17 tribes with historical ties to the lands of the Amistad NRA. However, none of those tribes have any current association with Amistad nor are there any tribes with close geographic ties to the area. Since any actions the park proposes in this rule are not expected to have any effects on these 17 tribes, no consultation has occurred.

Administrative Procedure Act

This final rule is effective upon publication in the **Federal Register**. In accordance with the Administrative Procedure Act, specifically, 5 U.S.C. 553(d)(1), this rule, 36 CFR 7.57(h), is exempt from the requirement of publication of a substantive rule not less than 30 days before its effective date.

As discussed in this preamble, the final rule is a part 7 special regulation for Amistad National Recreation Area that relieves the restrictions imposed by the general regulation, 36 CFR 3.24. The general regulation, 36 CFR 3.24, prohibits the use of PWC in units of the national park system unless an individual park area has designated the use of PWC by adopting a part 7 special regulation. The proposed rule was published in the **Federal Register** (68 FR 60305) on October 22, 2003, with a 60-day period for notice and comment consistent with the requirements of 5 U.S.C. 553(b). The Administrative Procedure Act, pursuant to the exception in paragraph (d)(1), waives the section 553(d) 30-day waiting period when the published rule ''grants or recognizes an exemption or relieves a restriction.'' In this rule the NPS is authorizing the use of PWCs, which is otherwise prohibited by 36 CFR 3.24. As a result, the 30-day waiting period before the effective date does not apply to the Amistad National Recreation Area final rule.

The Attorney General's Manual on the Administrative Procedure Act explained that the ''reason for this exception would appear to be that the persons affected by such rules are benefited by them and therefore need no time to conform their conduct so as to avoid the legal consequences of violation. The fact that an interested person may object to such issuance, amendment, or repeal of a rule does not change the character of the rule as being one 'granting or recognizing exemption or relieving restriction,' thereby exempting it from the thirty-day requirement.'' This rule is within the scope of the exception as described by the Attorney General's Manual and the 30-day waiting period should be waived. See also, *Independent U.S. Tanker Owners Committee* v. *Skinner*, 884 F.2d 587 (DC Cir. 1989). In this case, the court found that paragraph (d)(1) is a statutory exception that applies automatically for substantive rules that relieves a restriction and does not require any justification to be made by the agency. ''In sum, the good cause exception must be invoked and justified; the paragraph (d)(1) exception applies automatically'' (884 F.2d at 591). The facts are that the NPS is promulgating this special regulation for the purpose of relieving the restriction, prohibition of PWC use, imposed by 36 CFR 3.24 and therefore, the paragraph (d)(1) exception applies to this rule.

In accordance with the Administrative Procedure Act, this rule is also excepted from the 30-day waiting period by the ''good cause'' exception in 5 U.S.C. 553(d)(3) and is effective upon publication in the **Federal Register**. As discussed above, the purpose of this rule is to comply with the 36 CFR 3.24 requirement for authorizing PWC use in park areas by promulgating a special regulation. ''The legislative history of the APA reveals that the purpose for deferring the effectiveness of a rule under section 553(d) was 'to afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take other action which the issuance may prompt.' S. Rep. No. 752, 79th Cong., 1st Sess. 15 (1946); H.R. Rep. No. 1980, 79th Cong., 2d Sess. 25 (1946).'' United *States* v. *Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977). The persons affected by this rule are PWC users and delaying the implementation of this rule for 30 days will not benefit them; but instead will be counterproductive by denying them, for an additional 30 days, the benefits of the rule.

List of Subjects in 36 CFR Part 7

District of Columbia, National Parks, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

■ 2. Add new paragraph (d) to § 7.79 to read as follows:

§ 7.79 Amistad Recreation Area.

* * * * *

(d) *Personal Watercraft (PWC).*

(1) PWCs are allowed within Amistad National Recreation Area with the following exceptions:

(i) The following areas are closed to PWC use:

(A) Hidden Cave Cove (where marked by buoys), located on the Rio Grande.

(B) Painted Canyon (where marked by buoys), located on the Rio Grande.

(C) Seminole Canyon, starting 0.5 miles from the mouth of the Rio Grande.

(D) Government coves at Diablo East and Rough Canyon to include the water and shoreline to the top of the ridge/property line.

(E) All terrestrial cave and karst features.

(F) The Lower Rio Grande area below Amistad Dam.

(G) The water area extending 1000 feet out from the concrete portion of Amistad Dam.

(ii) PWC are prohibited from landing on any island posted as closed.

(2) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: May 21, 2004.

Paul Hoffman,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–12053 Filed 5–26–04; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC97

Lake Meredith National Recreation Area, Personal Watercraft Use

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule designates areas where personal watercraft (PWC) may be used in Lake Meredith National Recreation Area, Texas. This rule implements the provisions of the National Park Service (NPS) general regulations authorizing park units to allow the use of PWC by promulgating a special regulation. Individual parks determine whether PWC use is appropriate based on an evaluation of that park's enabling legislation, resources and values, other visitor uses, and overall management objectives.

DATES: *Effective Date:* This rule is effective May 27, 2004.

ADDRESSES: Mail inquiries to the Superintendent, Lake Meredith National Recreation Area, P.O. Box 1460, Fritch, TX 79036–1460, Fax: (806) 857–2319, e-mail: *LAMR_Superintendent@nps.gov*.

FOR FURTHER INFORMATION CONTACT: Kym Hall, Special Assistant, National Park Service, 1849 C Street, NW., Room 3145, Washington, DC 20240. Phone: (202) 208–4206. E-mail: *Kym_Hall@nps.gov*.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking and Environmental Assessment

On December 12, 2003, the National Park Service published a Notice of Proposed Rulemaking for the operation of PWC at Lake Meredith National Recreation Area (68 FR 17292). The proposed rule for PWC use was based on alternative B in the Environmental Assessment (EA) prepared by NPS for Lake Meredith NRA. The EA was available for public review and comment from March 10 to April 9, 2003, and the NPRM was available for public comment from December 12, 2003 to February 10, 2004.

The purpose of the Environmental Assessment was to evaluate a range of alternatives and strategies for the management of PWC use, ensuring the protection of park resources and values, and offering recreational opportunities as provided for in the National Recreation Area's enabling legislation, purpose, mission, and goals. The analysis assumed an alternative would be implemented beginning in 2002 and considered a 10-year use period, from 2002 to 2012. The Environmental Assessment evaluated three alternatives concerning the use of PWC at Lake Meredith National Recreation Area. Alternative A allows PWC use under a special regulation that includes certain current provisions of the Superintendent's Compendium. Alternative B allows continued PWC operation similar to alternative A, but use is further restricted to reduce conflicts between fishermen and PWC operators in lake areas and to protect water resources by designating and marking ''Flat Wake'' zones in a number of the canyons. In addition to the two alternatives for allowing restricted PWC use, a no-action alternative was considered that would continue the prohibition of all PWC use within the National Recreation Area. All three alternatives were evaluated with respect to PWC impacts on water quality, air quality, soundscapes, wildlife and wildlife habitat, threatened, endangered, or special concern species, shoreline vegetation, visitor experience, visitor conflict and safety, and cultural resources.

Based on the Environmental Assessment, NPS determined that alternative B is the park's preferred alternative for managing PWC use. Alternative B is also considered the environmentally preferred alternative.

Summary of Comments

The proposed rule was published for public comment on December 12, 2003 (68 FR 69358), with the comment period lasting until February 10, 2004. The National Park Service received 2,870 timely written responses regarding the proposed regulation. Of the responses, 2,512 were form letters in 7 separate formats, 345 were signatures on a petition, and 14 were separate letters. Of the 14 separate letters, 9 were from individuals, 4 from organizations, and 1 from a public agency. Within the following discussion, the term ''commenter'' refers to an individual, organization, or public agency that responded. The term ''comments'' refers to statements made by a commenter.

General Comments

1. Several commenters, including Bluewater Network and the American Canoe Association, stated that the Environmental Assessment failed to use the best data available and picked Alternative B without adequate scientific justification.

NPS Response: None of the alternatives evaluated in the Environmental Assessment resulted in significant adverse or beneficial impacts. The NPS chose the preferred alternative, continued PWC use with restrictions, because it appears to meet the needs of most park visitors while continuing to protect the environment. If the EA process would have discovered significant impacts from PWC use at LAMR than an EIS would have been prepared or a different course of action would have been pursued. To the contrary the environmental impacts discovered during the EA process revealed no significant reasons for not moving forward with the preferred alternative. A summary of the NPS rulemaking and associated personal watercraft litigation is provided in chapter 1, Purpose of and Need for Action, Background, of the EA. NPS believes it has complied with the National Environmental Policy Act (NEPA) and has properly assessed the impacts of personal watercraft on the resources of Lake Meredith National