

e. Submission to Congress and the General Accounting Office

Pursuant to section 801(a)(1)(A) of the Administrative Procedure Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army has submitted a report containing this Rule to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office. This Rule is not a major Rule within the meaning of Section 804(2) of the Administrative Procedure Act, as amended.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

■ For the reasons set out in the preamble, the Corps amends 33 CFR Part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Section 334.82 is added to read as follows:

§ 334.82 Narragansett Bay, East Passage, Coasters Harbor Island, Naval Station Newport, Newport, Rhode Island, Restricted Area.

(a) *The area.* The waters within a “C-shaped” area adjacent to and surrounding Coasters Harbor

Island beginning at Coddington Point at latitude 41°31'24.0" N, longitude 71°19'24.0" W; thence west southwest to latitude 41°31'21.5" N, longitude 71°19'45.0" W; thence south southwest to latitude 41°31'04.2" N, longitude 71°19'52.8" W; thence due south to latitude 41°30'27.3" N, longitude 71°19'52.8" W; thence south southeast to 41°30'13.8" N, longitude 71°19'42.0" W; thence southeast to latitude 41°30'10.2" N, longitude 71°19'32.6" W; thence due east to latitude 41°30'10.2" N, longitude 71°19'20.0" W; thence northerly along the mainland shoreline to the point of origin.

(b) *The regulation.* All persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Naval authority, vessels of the United States Coast Guard, and Federal, local or State law enforcement vessels, are prohibited from entering the restricted areas without permission from the Commanding Officer Naval Station Newport, USN, Newport, Rhode Island or his/her authorized representative.

(c) *Enforcement.* (1) The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the United States Navy, Commanding Officer Naval Station Newport, Newport, Rhode Island and/or other persons or agencies as he/she may designate.

Dated: June 21, 2004.

Michael B. White,

Chief, Operations Division, Directorate of Civil Works.

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024-AD01

Lake Roosevelt 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 Roosevelt National Recreation Area, Washington. 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 require 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 June 25, 2004.

ADDRESSES: Mail inquiries to Superintendent, Lake Roosevelt National Recreation Area, 1008 Crest Drive, Coulee Dam, WA 99116 or e-mail lro@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. The regulation established a 2-year grace period for 21 park units with existing PWC use to consider whether PWC use should be allowed.

Description of Lake Roosevelt National Recreation Area

Lake Roosevelt National Recreation Area was established in eastern Washington State in 1946 following the Secretary of the Interior's approval of a Tri-Party Agreement among the National Park Service, the Bureau of Reclamation, and the Bureau of Indian Affairs. The reservoir and related lands were administered as the recreation area under this agreement until 1974 when Interior Secretary Rogers C.B. Morton directed that the agreement for the management of the lake be expanded to include the Confederated Tribes of the Colville Reservation and the Spokane Tribe of Indians. Secretary Morton's directive was prompted by the Interior Solicitor's opinion that the tribes have exclusive rights to hunting, boating, and fishing within those areas of the reservoir that are within the boundaries of the two Indian reservations. An accord was reached on April 5, 1990, when the Secretary of the Interior approved the Lake Roosevelt Cooperative Management Agreement. The agreement confirmed and established management authority of the two Indian tribes over the portions of Lake Roosevelt and related lands within the boundaries of their respective reservations that were previously administered as part of the national recreation area. In 1997, the name of the park was changed from Coulee Dam National Recreation Area to Lake Roosevelt National Recreation Area.

In the Lake Roosevelt Cooperative Management Agreement, Lake Roosevelt National Recreation Area is defined as the waters and lands managed by the National Park Service. Lake Roosevelt National Recreation Area consists of 312 miles of shoreline along the Columbia River. The National Park Service administers 47,438 acres of the 81,389-acre water surface (at full pool), and 12,936 acres of adjacent land. The lands of Lake Roosevelt National Recreation Area consist primarily of a narrow band of shore above the maximum high water mark (1,290 feet), which was originally

purchased by the Bureau of Reclamation for construction of the reservoir. The national recreation area also includes shoreline along about 29 miles of the Spokane River Arm of the lake and about 7 miles along the Kettle River Arm. Most of the remainder of the shoreline and surface area of Lake Roosevelt lies within the reservation boundaries of the Spokane Tribe and the Colville Confederated Tribes and is not part of the national recreation area. The Bureau of Reclamation retains the management of the dam, an area immediately around the dam, and a few other locations that are necessary for operating the reservoir.

The NPS at Lake Roosevelt preserves and protects a rich cultural history throughout the park. Nine thousand years of human use of the area is evident throughout the park through a variety of archeological resources. Historical features such as St. Paul's Mission and Fort Spokane attest to a more recent history. The natural features around the lake tell the story of the Ice Age Floods that shaped this landscape about 13,000 years ago. The recreation area is home to many species of wildlife and fish, including bald eagles, peregrine falcons, black bear, kokanee salmon and walleye. Ponderosa Pine and Douglas Fir are plentiful. Popular types of recreation include fishing, swimming, boating, water skiing, picnicking, and camping from vessels and vehicles.

Purpose of Lake Roosevelt National Recreation Area

The purpose and significance statements below are from Lake Roosevelt's Strategic Plan (NPS 2000) and General Management Plan (NPS 2000). Lake Roosevelt National Recreation Area was established for the following purposes:

- (1) To provide opportunities for diverse, safe, quality, outdoor recreational experiences for the public.
- (2) To preserve, conserve, and protect the integrity of natural, cultural, and scenic resources.
- (3) To provide opportunities to enhance public appreciation and understanding about the area's significant resources. The Recreation Area has no specific enabling legislation and was created under an act passed in 1946 authorizing the administration of the areas by the NPS for recreational use pursuant to cooperative agreements. [Act of August 7, 1946, 16 U.S.C. 17j–2(b)].

Significance of Lake Roosevelt National Recreation Area

The following statements summarize the significance of Lake Roosevelt National Recreation Area:

(1) It offers a wide variety of recreation opportunities in a diverse natural setting on a 154-mile-long lake that is bordered by 312 miles of publicly owned shoreline that is available for public use.

(2) It contains a large section of the upper Columbia River and a record of continuous human occupation dating back more than 9,000 years.

(3) It is contained within three distinct geologic provinces—the Okanogan Highlands, the Columbia Plateau, and the Kootenay Arc, which were sculpted by Ice Age floods.

The park's mission statement is as follows: As a unit of the national park system, Lake Roosevelt National Recreation Area is dedicated to conserving unimpaired, the natural and cultural resources and recreational and scenic values of Lake Roosevelt for the enjoyment, education, and inspiration of this and future generations. The recreation area also shares responsibility for advancing a great variety of programs designed to help extend the benefits of natural and cultural resource conservation and outdoor recreation.

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 within the National Park System. 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 * * *”

The NPS's regulatory authority over waters subject to the jurisdiction of the United States, including navigable waters and areas within their ordinary reach, is based upon the Property and Commerce Clauses of the U.S. Constitution. 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 Lake Roosevelt National Recreation Area

A variety of watercraft can be found on Lake Roosevelt during the summer season, *e.g.*, ski boats, PWC, runabouts, day cruisers, sailboats (some with auxiliary motors), houseboats, and, to a lesser degree, canoes, kayaks, and rowboats. Activities on the lake associated with boating include sightseeing, water skiing, fishing, swimming, camping, picnicking, and sailing. The park estimates that there were over 50,000 boat launches during the 2001 primary boating season based on the launch fees counted at the park. Most boaters reside within 100 miles of Lake Roosevelt but others come from cities and communities throughout Washington, as well as from Idaho, Oregon and Canada. PWC use is estimated at approximately 56 PWC users on a peak use summer day in 2002, increasing to an average of 62 PWC users per peak use day by 2012.

PWC use began on Lake Roosevelt during the 1980s but did not become fairly common until the mid-1990s. PWC are often used as a houseboat accessory. Activities undertaken by PWC on Lake Roosevelt include running up and down sections of the lake, towing skiers, jumping wakes, and general boating activities. Surveys of boat trailers conducted in 2001 and 2002 estimate the number of PWC to be approximately 4% of all boating use at Lake Roosevelt. PWC are allowed to launch, operate, and beach from dawn to dusk throughout the national recreation area. The primary PWC use season is June through September with some use from April through May and October through December, but no use in winter months because the weather and water is generally too cold.

In the past, PWC were regulated as vessels under the Superintendent's Compendium and, along with other vessels, were allowed in all areas of the lake. The Superintendent's Compendium is terminology the NPS uses to describe the authority provided to the Superintendent under 36 CFR 1.5 and 1.7. It allows for local, park-specific regulations for a variety of issues and under specific criteria. Before the closure, areas 100 feet around swim beaches, marinas, and narrow sections

of the lake had speed or "flat-wake" restrictions applicable to all vessels, based on Washington State boating regulations. In addition, before the closure, flat-wake zones on the lake included Hawk Creek from the waterfall at the campground to an area called "the narrows" and on the Kettle River above the Napoleon Bridge. Crescent Bay Lake, located near Lake Roosevelt but not a connected waterway, was closed to all motorized craft. In flat-wake zones vessels and PWC could not exceed flat-wake speed, which is defined as a minimal disturbance of the water by a vessel in order to prevent damage or injury.

None of the concessioners at Lake Roosevelt currently rent PWC. Within 60 to 100 miles of the park, a total of five PWC dealerships were identified in Wenatchee, Spokane, and Okanogan. No PWC dealerships were identified closer to the park. A total of three rental shops were found within 30 miles of the park including Banks Lake, Sun Lake, and Blue Lake.

Within 100 miles of Lake Roosevelt National Recreation Area there are several major lakes and many smaller lakes that allow PWC. The larger lakes include Banks Lake and Lake Chelan in Washington and Lake Coeur d'Alene and Lake Pend Oreille in Idaho.

Some research suggests that some segments of the public view PWC as a "nuisance" due to their noise, speed, and overall effects on the environment, while others view PWC as no different from other watercraft and believe PWC users have a "right" to enjoy their sport. There has been some conflict between PWC and fishermen, canoeists, and swimmers at Lake Roosevelt.

A total of only eight safety incidents involving PWC were reported on Lake Roosevelt during the years 1997 through 2002.

Notice of Proposed Rulemaking and Environmental Assessment

On February 6, 2004, the National Park Service published a Notice of Proposed Rulemaking (NPRM) for the operation of PWC at Lake Roosevelt National Recreation Area (69 FR 5799). The proposed rule for PWC use was based on alternative B in the Environmental Assessment (EA) prepared by NPS for Lake Roosevelt. The EA was available for public review and comment from April 28 to May 28, 2003, and the NPRM was available for public comment from February 6 to April 6, 2004.

The purpose of the environmental assessment was to evaluate a range of alternatives and strategies for the management of PWC use at Lake

Roosevelt to ensure the protection of park resources and values while offering recreational opportunities. The analysis assumed alternatives would be implemented beginning in 2002 and considered a 10-year use period, from 2002 to 2012. In addition, the analysis assumed that PWC annual use will increase approximately 1% annually. Also, the analysis assumed that, due to the narrow and linear characteristics of the reservoir, each PWC that launches will recreate on waters managed by both NPS and tribal entities during an average trip, regardless of launch point. The NPS assumes no jurisdiction over tribal waters and generally does not enforce regulations in those areas; however, because of existing Memorandums of Understanding with the tribes the park may respond to law enforcement or emergency situations on tribal waters.

The EA evaluated three alternatives concerning the use of PWC at Lake Roosevelt National Recreation Area. Alternative A allows PWC use under a special NPS regulation in accordance with NPS Management Policies 2001, 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 the closure on November 7, 2002. Therefore, under Alternative A, PWC use would be allowed throughout the recreation area, with limitations only in areas where restrictions existed before the closure. These areas include the following: Crescent Bay Lake (motorized watercraft restricted), Upper Kettle River, above the Napoleon Bridge (flat wake), and Upper Hawk Creek from the waterfall near the campground through the area known as the "narrows" (flat wake). Launch and retrieval of PWC would continue to be permitted only at designated boat launch ramps within Lake Roosevelt National Recreation Area. PWC users would be able to land anywhere along the shoreline, except in designated swimming areas. All nonconflicting State and Federal watercraft laws and regulations would continue to be enforced.

As with Alternative A, Alternative B reinstates PWC use under a special regulation, but specific limits and use areas would be defined. However, based on comments received from the public during the EA scoping process and through the comment period for the EA, the NPRM proposed to implement Alternative B with one modification; the Kettle River would be closed to PWC above the Hedlund Bridge. Under Alternative B, PWC use would be reinstated within Lake Roosevelt in most locations of the recreation area

where it was allowed prior to November 7, 2002 with some new restrictions. Under this alternative, the current flat-wake zone in Hawk Creek and the restriction on motorized watercraft use on Crescent Bay Lake would remain. In addition, extra flat-wake speed zoning would be implemented. These flat-wake restrictions would apply to the following areas: Within 200 feet from launch ramps, marina facilities, campgrounds, beaches occupied by swimmers, water skiers and other persons in the water and the Spokane Arm from 200 feet west of the Two Rivers Marina on the downstream end, to 200 feet east of the Fort Spokane launch ramp on the upstream end, above the vehicle bridge. In addition to the extra flat-wake zones, PWC use would be prohibited on the Kettle River from Hedlund Bridge, north to the headwaters. Except for Napoleon Bridge launch on the Kettle River where PWC launching would be prohibited, launch and retrieval of PWC would be permitted only at designated boat launch ramps within Lake Roosevelt National Recreation Area. As with Alternative A, PWC users would be able to land anywhere along the shoreline, except in designated swimming areas and all state and federal watercraft laws and regulations would continue to be enforced. The no-action alternative, would continue the current closure on PWC use within this national park system unit.

As stated in the NPRM, based on the environmental analysis prepared for PWC use at Lake Roosevelt National Recreation Area, Alternative B is the preferred alternative and is also considered the environmentally preferred alternative because it best fulfills park responsibilities as trustee of this sensitive habitat; ensuring safe, healthful, productive, and aesthetically and culturally pleasing surroundings; and attaining 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

The proposed rule was published for public comment on February 6, 2004 (69 FR 5799), with the comment period lasting until April 6, 2004. The National Park Service received 19 timely written responses regarding the proposed regulation. All of the responses were separate letters. Of the 19 separate letters, 14 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 stated that the analysis and restrictions should include all motorized watercraft and not be limited to only PWC.

NPS Response: The EA 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 purposes and management goals and objectives. An analysis was done on the management of personal watercraft in order to meet the requirement of the NPS general regulations 36 CFR 3.24, for PWC use.

2. Several commenters stated that the proposed rule does not comply with Park's General Management Plan because it allows PWC use upstream of the Hedlund Bridge on the Kettle River.

NPS Response: The implementation of this final rule is consistent with the Lake Roosevelt National Recreation Area General Management Plan, which allows for continuing PWC use subject to additional controls as necessary. The final rule, which is based on the updated Preferred Alternative B, does not allow PWC use upstream of the Hedlund Bridge on the Kettle River.

3. One commenter stated that the management of PWC by the NPS was inconsistent with the Tri-Party Agreement signed in 1946 by the Bureau of Reclamation, National Park Service and the Bureau of Indian Affairs.

NPS Response: PWC use under this final rule will be managed in accordance with state boating regulations with additional management prescriptions included as part of this alternative. The prescriptions are within the authority of the National Park Service to regulate recreational activities in areas under National Park Service jurisdiction. The Lake Roosevelt Cooperative Management Agreement, signed by the Secretary of the Interior on April 5, 1990, recognizes Lake Roosevelt National Recreation Area as an existing unit of the national park system and as such, subject to all NPS laws, regulations, policies and guidelines.

4. Several commenters stated that the analysis failed to adequately address NPS impairment policies and mandates.

NPS Response: The "Summary of Laws and Policies" section in the "Environmental Consequences" chapter of the 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 Lake Roosevelt National Recreation Area resources and values can be found under "Impairment Analysis" in the "Methodology" section of the EA.

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 Assessments establish 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.

5. One commenter stated that the proposed rule gave the Superintendent of Lake Roosevelt National Recreation Area too much discretion to react contrarily to public preference for PWC use.

NPS Response: Section 1.5 of Title 36 of the Code of Federal Regulations authorizes a park superintendent to temporarily limit, restrict, or terminate access to a park area to all public use or to a specific use or activity. Except in emergency situations, prior to implementing or terminating a restriction, condition, public use limit or closure, the superintendent will prepare a written determination justifying the action. The determination will set forth the reason(s) the restriction or closure has been established and an explanation of why less restrictive measures will not suffice. This authority is the same authority that is given to all superintendents to manage visitor use activities in any unit of the national park system.

6. One commenter stated that the analysis considered for the proposed rule does not include adequate studies on visitor experience related to PWC use.

NPS Response: The scope of the EA did not include conducting site specific studies regarding potential effects of PWC use on the Lake Roosevelt National Recreation Area. Analysis of potential impacts of PWC use on the national recreation area was based on best

available data, input from park staff, and the results of analysis using that data.

7. One commenter expressed concern that the water quality analysis did not take into account the actual lake level, which is currently well below full pool, when analyzing impacts from PWC use on water quality.

NPS Response: Although the analysis did not look at the lower lake levels described in this comment, the volume of water required for dilution was calculated to be such a small volume that even with lower lake levels impacts would be negligible adverse.

8. One commenter requested additional information regarding the statement from Bluewater Network that research at Lake Mead, Nevada, showed PWC dump 25–30% of unburned fuel into the water.

NPS Response: The report by the Bluewater Network cited in the Selected Bibliography section of the EA is "Jet Position Paper" (2001) available on the Web at <http://www.earthisland.org/bw/jetskipos.htm>. Information from this article is not used in the EA. In appendix A of the EA, an emission rate of 3 gal./hour is attributed to the California Air Research Board (CARB 1998). This is based on the CARB (1998, 1999) estimate of 25–30% unburned fuel discharged into the water. In Bluewater Network (2001), reference is made to figures in Personal Watercraft Illustrated wherein model year 2000 personal watercraft on average consume 15.1 gallons of fuel per hour at full throttle and can dump between 25 and 30% of the fuel unburned into the water or 3.79 to 4.53 gal/hour. The emission rate of 3 gal/hour used in calculations of impacts to water quality is a mid-point between 3 gallons in 2 hours (1.5 gal/hour; NPS 1999) and 3.79 to 4.53 gal/hour (Personal Watercraft Illustrated and Bluewater Network 2001). The reference in the comment to "25%–30% of unburned fuel in Lake Mead, Nevada" cannot be located in the Bluewater Network (2001) article, and therefore, the raw data also cannot be located.

9. One commenter expressed concern that there was little discussion of cumulative impacts to water quality in the analysis.

NPS Response: Cumulative impacts to water quality are not ignored in the EA. Cumulative impacts are discussed for each of the three alternatives on pages 95–96 and 98–99. The challenge in the EA was to quantify the impacts to water quality from personal watercraft, other motorized vessels, and from other sources of petroleum-based organic compounds typical of those emitted from personal watercraft within the

Columbia River watershed. Contributions of organic pollutants from personal watercraft and other motorized vessels were estimated for the purpose of evaluating cumulative impacts from these two types of vessels. As described on pages 88–89 of the EA, Lake Roosevelt National Recreation Area does not have quantitative water quality data applicable to the evaluation of impacts to the reservoir water quality. Therefore, the contribution of organic contaminants from upstream sources cannot be quantified. Because the EA was prepared for the purpose of evaluating potential impacts from personal watercraft, which constitute an estimated 4% of all motorized vessels on the reservoir (page 84 of the EA), the contribution from these watercraft was not ignored.

10. One commenter was concerned that the EA failed to adequately address the impacts to wildlife from PWC use. The commenter felt that the absence of osprey is directly related to PWC noise level and that the EA does not address the loss of river otters.

NPS Response: The upper Hawk Creek area is designated as a flat-wake zone (page 64 of the EA) which helps minimize noise disturbance of waterfowl, including osprey. The decline of a species from an area is usually the result of many contributing factors. These factors can include a loss of habitat, loss of suitable prey organisms, increased pollution levels, or other human disturbance. The apparent decline in numbers of osprey likely is not due to just one factor (e.g., personal watercraft noise levels), especially since Hawk Creek is a flat-wake zone.

River otters are listed together with beaver as common small mammals on page 63 of the EA. In the Environmental Consequences section of the EA, “Aquatic mammals such as beaver * * *” are discussed in the context of disturbance of wildlife and wildlife habitat. A list of current protected (endangered, threatened, and species of concern) species is provided in Table 9 (page 66 of the EA). The river otter is not listed by either the U.S. Fish and Wildlife Service or the Washington Department of Fish and Wildlife. If, as the comment contends, the river otter is now absent from areas where it was once abundant, it might be considered as an extirpated species—missing from a formerly occupied area but still found in other areas of its normal range.

11. Several commenters expressed concern regarding the park’s ability to adequately enforce the new regulations set forth in the proposed rule.

NPS Response: PWC use under the final rule will be managed under current

NPS boating regulations, which adopt Washington State Boating Laws, with additional management prescriptions included as a part of this alternative. These management strategies are more restrictive than state PWC regulations by increasing flat-wake speed zones and resource monitoring. The prescriptions are within the NPS legal mandate to regulate recreational activities under its jurisdiction, and there will be no conflict with state or other federal policies or regulations. Conflicts with regulations and policies of the Spokane Tribe of Indians and the Confederated Tribes of the Colville Reservation would exist due to differences in restrictions on the National Park Service versus tribal waters. The park anticipates staffing at current levels will be able to manage the new restrictions.

12. Two commenters were concerned that the socioeconomic impact analysis was not adequate because it failed to consider impacts to other non-PWC businesses if a ban on PWC was to continue.

NPS Response: As outlined in the EA, Alternative B is expected to have minimal, if any, impact on local/regional socioeconomics since the use of PWC at Lake Roosevelt will not be banned.

13. Two commenters expressed concern that that Spokane and Colville Confederated Tribes were not consulted with during the planning process.

NPS Response: The tribes were invited to review and comment on the draft EA before it was released to the public. The superintendent, after the public comment period closed, involved the tribal Business Councils and senior BIA representatives in discussions about the final version of the preferred alternative. Both tribes indicated that they did not intend to limit use by PWC on the portions of Lake Roosevelt that they manage and that for the NPS to act unilaterally on this issue would cause great confusion for the recreating public, result in greater impacts from PWC on the parts of the lake under their management.

Economic Summary

The preferred alternative (Alternative B) and another alternative (Alternative A) were analyzed to determine the economic impacts of allowing the use of personal watercraft (PWC) in Lake Roosevelt National Recreation Area (LARO).¹ Alternative C, which would maintain a ban on PWC in LARO, represents the baseline for this analysis.

¹ This summary briefly describes the results of the economic analysis presented in National Park Service 2003.

The economic impacts of Alternatives A and B are measured relative to that baseline. Alternative A would reinstate PWC use in LARO as previously managed prior to the ban subject to specific location, flat wake, launch and retrieval, and operating restrictions. Alternative B would also reinstate PWC use, but includes additional location and flat wake restrictions to mitigate watercraft safety and visitor health and safety concerns, and to enhance the overall visitor experience. Additionally, Alternative B would establish a monitoring program to determine any future impacts of allowing PWC use in LARO.

The primary beneficiaries of Alternatives A and B are the visitors who would use PWCs within the recreation area if permitted, PWC users in substitute areas outside LARO where individuals displaced from LARO ride because of the ban, and the businesses that serve PWC users. All visitors using PWCs in LARO prior to the ban are assumed to regain their full economic value for PWC use in LARO under both Alternatives A and B. PWC users who currently ride in substitute areas outside LARO are assumed to gain some economic value if these areas are less crowded than under baseline conditions due to reinstating PWC use in LARO. Finally, suppliers of PWC rentals, sales, and service, as well as local hotels, restaurants, gas stations, and other businesses that serve PWC users, will likely experience an increase in business under Alternatives A and B.

While beneficiaries may gain more economic value under Alternative A than Alternative B due to fewer restrictions, NPS was unable to quantify any differences, and considers the benefits of those two alternatives to be similar. For both Alternatives A and B, PWC users are expected to gain a total present value of benefits between \$1,076,400 and \$1,311,300 over the next ten years, depending on the discount rate used.² Businesses are expected to gain a total present value of benefits between \$9,600 and \$78,000, depending on the discount rate used. The total present values of these benefits are presented in Table 1, and their

² Quantified economic impacts were discounted over the ten-year timeframe using both 3 and 7-percent discount rates. A 3-percent discount rate is indicated by the economics literature (e.g., Freeman, 1993) and by two Federal rule-makings (61 FR 453; 61 FR 20584). A 7-percent discount rate is required by Office of Management and Budget Circular A–94.

amortized values per year are given in Table 2.

TABLE 1.—TOTAL PRESENT VALUE OF BENEFITS (THOUSANDS OF DOLLARS) FOR PERSONAL WATERCRAFT USE IN LAKE ROOSEVELT NATIONAL RECREATION AREA, 2003 TO 2012

	PWC users	Businesses	Total
Alternative A:			
Discounted at 3% ^a	\$1,311.3	\$12.1 to \$78.0	\$1,323.5 to \$1,389.3
Discounted at 7% ^b	1,076.4	9.6 to 61.6	1,086.0 to 1,138.0
Alternative B:			
Discounted at 3% ^a	1,311.3	12.1 to 78.0	1,323.5 to 1,389.3
Discounted at 7% ^b	1,076.4	9.6 to 61.6	1,086.0 to 1,138.0

^a The economics literature supports a 3-percent discount rate in the valuation of public goods (e.g., Freeman, 1993). Federal rule-makings also support a 3-percent discount rate in the valuation of lost natural resource use (61 FR 453; 61 FR 20584).
^b Office of Management and Budget Circular A-94, revised January 2003.

TABLE 2.—AMORTIZED BENEFITS PER YEAR (THOUSANDS OF DOLLARS) FOR PERSONAL WATERCRAFT USE IN LAKE ROOSEVELT NATIONAL RECREATION AREA, 2003 TO 2012^a

	PWC users	Businesses	Total
Alternative A:			
Discounted at 3% ^b	\$153.7	\$1.4 to \$9.1	\$155.2 to \$162.9
Discounted at 7% ^c	153.3	1.4 to 8.8	154.6 to 162.0
Alternative B:			
Discounted at 3% ^b	153.7	1.4 to 9.1	155.2 to 162.9
Discounted at 7% ^c	153.3	1.4 to 8.8	154.6 to 162.0

^a This is the total present value of benefits reported in Table 1 amortized over the ten-year analysis timeframe at the indicated discount rate.
^b The economics literature supports a 3-percent discount rate in the valuation of public goods (e.g., Freeman, 1993). Federal rule-makings also support a 3-percent discount rate in the valuation of lost natural resource use (61 FR 453; 61 FR 20584).
^c Office of Management and Budget Circular A-94, revised January 2003.

The costs associated with Alternatives A and B would accrue primarily to LARO visitors who do not use PWCs and whose recreation area experience is negatively affected by the use of PWCs within the recreation area. At LARO, non-PWC uses include boating, canoeing, fishing, and hiking. Impacts to these users may include the aesthetic costs associated with noise and visibility impacts, human health costs, ecosystem degradation costs, and safety and congestion costs. Average annual visitation to LARO was over 1.4 million people from 1998 to 2002. Most of these visitors are believed to come to the park for some form of water-based recreation. However, non-PWC users accounted for over 99 percent of total visitation.

“Nonusers” of the recreation area may also bear some costs under Alternatives A and B. For example, individuals who do not visit the recreation area may experience a reduction in economic value simply from the knowledge that the natural resources of the recreation area may be degraded by PWC use. Part of this loss may stem from a decreased assurance that the quality of the recreation area’s resources is being protected for the enjoyment of future generations.

Most of the costs associated with Alternatives A and B are believed to be relatively small. Evaluating these costs

in monetary terms was not feasible with currently available data, but they are qualitatively described in the economic analysis. Therefore, the benefits presented in Tables 1 and 2 above overstate the net benefits (benefits minus costs) of the different alternatives. If all costs could be quantified, the indicated net benefits for each alternative would be lower than the benefits indicated in Tables 1 and 2.

The costs associated with aesthetics, ecosystem protection, human health and safety, congestion, and nonuse values would likely be greater for Alternative A and for Alternative B due to the additional restrictions on PWC use in Alternative B. Since the quantified benefits for Alternatives A and B were the same, inclusion of these unquantified costs would reasonably result in Alternative B having the greatest level of net benefits. Therefore, based on this analysis, the selection of Alternative B as the preferred alternative was considered reasonable.

References

Freeman, A. M. III. *The Measurement of Environmental and Resource Values: Theory and Methods*. Washington, DC: Resources for the Future, 1993.
 National Park Service. “Economic Analysis of Management Alternatives for Personal Watercraft in Lake

Roosevelt National Recreation Area.” Report prepared for the National Park Service by MACTEC Engineering and Consulting, Inc., BBL Sciences, Inc., and RTI International, October 2003.

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.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and has not 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. This determination is based on the report “Economic Analysis of Management Alternatives for Personal Watercraft in Lake Roosevelt National Recreation Area” (MACTEC Engineering and Consulting, Inc., October 2003).

(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.

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 report "Economic Analysis of Management Alternatives for Personal Watercraft in Lake Roosevelt National Recreation Area" (MACTEC Engineering and Consulting, Inc., October 2003).

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 final 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

As a companion document to the NPRM, NPS issued the Personal Watercraft Use Environmental Assessment for Lake Roosevelt National Recreation Area. The Environmental Assessment (EA) was open for public review and comment from April 28, 2003 to May 28, 2003. A Finding of No Significant Impact (FONSI) was signed on June 17, 2004. Copies of the FONSI may be downloaded at <http://www.nps.gov/laro> or obtained by calling 509-633-9441 ext. 110 or writing to the Superintendent, Lake Roosevelt National Recreation Area, 1008 Crest Drive, Coulee Dam, WA 99116.

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 potential effects. Lake Roosevelt conducted preliminary consultation

with the Spokane Tribe of Indians and the Confederated Tribes of the Colville Reservation in 2000 when the original rulemaking came into effect. Since that time, the park has continued to keep the Tribes informed in writing about various milestones during the PWC process. The Colville Tribes also commented on the EA which supports this rulemaking and supported the preferred alternative which is implemented through this rulemaking. The NPS also consulted with the Tribes on the provisions of the regulation and its possible effects on tribal waters.

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 7.55(c), 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 Lake Roosevelt 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** (69 FR 5799) on February 6, 2004, 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 Lake Roosevelt 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. Amend § 7.55 by revising the section title and adding new paragraph (c) to read as follows:

§ 7.55 Lake Roosevelt National Recreation Area.

* * * * *

(c) *Personal Watercraft (PWC)*. (1) PWCs are allowed on the waters within Lake Roosevelt National Recreation Area except in the following areas:

- (i) Crescent Bay Lake.
- (ii) Kettle River above the Hedlund Bridge.

(2) Launch and retrieval of PWC are permitted only at designated launch ramps. Launching and retrieval of PWC at Napoleon Bridge launch ramp is prohibited.

(3) PWC may land anywhere along the shoreline except in designated swimming areas.

(4) PWC may not be operated at greater than flat-wake speeds in the following locations:

(i) Upper Hawk Creek from the waterfall near the campground through the area known as the "narrows" to the confluence of the lake, marked by "flat wake" buoy(s).

(ii) Within 200 feet of launch ramps, marina facilities, campground areas, water skiers, beaches occupied by swimmers, or other persons in the water.

(iii) The stretch of the Spokane Arm from 200 feet west of the Two Rivers Marina on the downstream end, to 200 feet east of the Fort Spokane launch ramp on the upstream end, above the vehicle bridge.

(5) 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: June 10, 2004.

Paul Hoffman,

Deputy Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 04–14115 Filed 6–24–04; 8:45 am]

BILLING CODE 4312–52–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 51, and 81

[OAR 2003–0079, FRL–7779–2]

RIN 2060–AJ99

Revision to the Preamble of the Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The EPA issued a final rule on April 30, 2004 (69 FR 23951) that set forth certain nationally-applicable requirements for implementation of the 8-hour ozone national ambient air quality standard (NAAQS)—the phase 1 rule. Section VI.L. of the preamble (69 FR 23995), provided that petitions for review challenging the final rule should be filed in the "appropriate circuit." The Clean Air Act (CAA) provides that petitions for review of any nationally applicable regulations may be filed only in the United States Court of Appeals for the District of Columbia Circuit. This document modifies section VI.L. to clarify that petitions for review of the phase I rule must be filed in the United States Court of Appeals for the District of Columbia Circuit.

DATES: This document is effective on June 25, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. John Silvasi, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5666, fax number (919) 541–0824 or by e-mail at silvasi.john@epa.gov or Ms. Denise Gerth, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5550, fax number (919) 541–0824 or by e-mail at gerth.denise@epa.gov.

SUPPLEMENTARY INFORMATION: The EPA issued final rule on April 30, 2004 (69 FR 23951) that set forth certain requirements for implementation of the 8-hour ozone NAAQS. That action is referred to as the "phase 1 rule." Section VI.L. of the preamble (69 FR 23995) provides information regarding when challenges to the phase 1 rule may be filed in accordance with section 307(b) of the CAA. Section 307(b) of the CAA provides that challenges to any nationally applicable regulations may be filed only in the United States Court of Appeals for the District of Columbia