DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

RIN 0710–AA59

Department of Army, Fort Richardson AK, Small Arms Complex, Fort Wainwright, AK

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing an amendment to its regulations to designate an existing military small arms impact area as a Danger Zone. The military exercise area is located within the Small Arms Complex of Fort Wainwright, Alaska, along the Tanana. The Danger Zone will only be activated by the United States Army Fort Wainwright, during live fire training exercises. The Army will advise residents in the vicinity when a military firing exercise is scheduled and thus ensure their safety by alerting them of, temporary, potentially hazardous conditions which may exist as a result of the military exercises. There will be no change in the use of the existing military exercise area. The area, however, needs to also be marked on navigation charts as a Danger Zone to insure security and safety for the public.

DATES: Written comments must be submitted on or before September 22, 2004.

ADDRESSES: U.S Army Corps of Engineers, ATTN: CECW–OR, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne M. Barry, Headquarters Regulatory Branch, Washington, DC at (202) 761–7763, or Mrs. Sheila Newman, Corps of Engineers, Alaska District, Regulatory Branch, at (907) 474–2166.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps proposes to amend the restricted area regulations in 33 CFR part 334 by adding section 334.1301 as a Danger Zone along the Tanana River as shown in the attached description.

Procedural Requirements

a. Review under Executive Order 12866.

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review under the Regulatory Flexibility Act.

These proposed rules have been reviewed under the Regulatory Flexibility Act (Public Law 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Corps expects that the economic impact of the identification of this danger zone would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

c. Review under the National Environmental Policy Act.

A preliminary draft environmental assessment has been prepared for this action. Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. The environmental assessment will be finalized after the public notice period is closed and all comments have been received and considered. It may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. Unfunded Mandates Act.

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either section 202 or section 205 of the Unfunded Mandates Act. We have also found under section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

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 proposes to amend 33 CFR part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR 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 334.1301 would be added to read as follows:

§ 334.1301 United States Army Danger Zone, Small Arms Complex, Fort Wainwright, Alaska along the Tanana River.

(a) *The area.* The waters within an area beginning at latitude 64° 79′ 37″N, longitude 147° 66′ 50″W; thence southerly to latitude 64° 77′ 98″N, longitude 147° 66′ 64″W; thence easterly along the shore line to latitude 64° 76′ 33″N, longitude 147° 57′ 42″W, thence northerly to latitude 64° 78′ 21″N, longitude 147° 57′ 46″W; thence westerly along the shorelines to the point of origin.

(b) *The regulation.* (1) During specific periods when military exercises will be conducted, as promulgated in the local notice to residents published by the United States Army, all vessels entering the Danger Zone are advised to proceed across the area by the most direct route and without unnecessary delay.

(2) During specific periods when Military exercises will be conducted, as promulgated in the local notice to residents published by the United States Army no vessel or craft of any size shall lie-to or anchor in the Danger Zone, other than a vessel operated by or for the USCG, or any other authorized agency.

(c) *Normal use.* At all other times, nothing in this section shall prohibit any lawful uses of this area.

(d) *Enforcement.* The regulation in this section shall be enforced by the Commanding Officer, Fort Richardson, Alaska, and/or persons or agencies as he/she may designate.

Dated: August 5, 2004.

Michael White,

Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 04–19229 Filed 8–20–04; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC94

Fire Island National Seashore, Personal Watercraft Use

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to designate areas where personal watercraft (PWC) may

be used in Fire Island National Seashore, New York. This rule implements the provisions of the 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.

DATES: Comments must be received by October 22, 2004.

ADDRESSES: Comments on the proposed rule should be sent to Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, NY 11772. E-mail: *michael_bilecki@nps.gov.* Fax: (631) 289–4810.

If you comment by e-mail, please include ''PWC rule'' in the subject line and your name and return address in the body of your Internet message. Also, you may hand deliver comments to Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York.

For additional information *see* ''Public Participation'' under **SUPPLEMENTARY INFORMATION** below.

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

Additional Alternatives

The information contained in this proposed rule supports implementation of the modified preferred alternative for Fire Island National Seashore in the Environmental Assessment (EA) published in September, 2002, and the errata issued March, 2004. The changes to the environmental assessment in the errata were made to modify the preferred alternative and its analysis, to address public comments on the EA, and to clarify the text. The public should be aware that three other alternatives including a no-PWC alternative were presented in the EA. Those alternatives should also be reviewed and considered when making comments on this proposed rule.

Personal Watercraft Regulation

On March 21, 2000, the National Park Service published a regulation on the management of 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 21 parks, 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 permitted to continue.

Description of Fire Island National Seashore

Fire Island National Seashore is a vital part of America's national system of parks, monuments, battlefields, recreation areas, and other natural and cultural resources. Located on a 32-mile long barrier island off the south shore of Long Island, New York, Fire Island National Seashore encompasses approximately 19,500 acres—many of which are bay and ocean waters—available to more than 4 million visitors each year. The National Seashore is interspersed with 17 local private communities, the William Floyd Estate, a maritime forest known as the Sunken Forest, and the Otis Pike Wilderness Area—the only Federal wilderness area in New York State. Together, these components comprise a seashore ecosystem of wildlife, private communities, and outdoor recreational activities, such as the use of personal watercraft (PWC).

The Fire Island National Seashore extends from the easterly boundary of the main unit of Robert Moses State Park eastward to Moriches Inlet and includes Fire Island proper and the surrounding islands and marshlands in the Great South Bay, Bellport Bay, and Moriches Bay adjacent to Fire Island. Included in the boundaries are Sexton Island, West Fire and East Fire Islands, Hollins Island, Ridge Island, Pelican Island, Pattersquash Island, and Reeves Island and other small and adjacent islands, marshlands, and wetlands that lend themselves to contiguity and reasonable administration within the National Seashore and the waters surrounding the National Seashore to distances of 1,000 feet in the Atlantic Ocean and up to 4,000 feet in Great South Bay and Moriches Bay. The NPS mainland terminal and headquarters are on the Patchogue River within Suffolk County, New York.

Fire Island National Seashore is fragmented by public and private beaches. Fire Island National Seashore includes the Otis Pike Wilderness Area established in 1981, the Sunken Forest, Watch Hill, Sailors Haven, the Fire Island Lighthouse (placed on the National Register of Historic Places in 1981), and the William Floyd Estate (placed on the National Register of Historic Places in 1980).

The resources and values that define the natural environment of Fire Island National Seashore include a diverse assemblage of wildlife, vegetation communities, water resources, geological features, and physical processes reflecting the complexity of the land/sea interface along the North Atlantic coast. Wildlife resources are a myriad of aquatic and terrestrial species inhabiting estuarine, dune and beach habitats. The indigenous plant communities reflect the adaptive extremes necessary for survival on a barrier island, where exposure to salt spray, lack of freshwater, and shifting sands create a harsh and dynamic environment.

The aquatic habitats of Fire Island and the adjacent coastal bays are central to the significance of the National Seashore. The inshore waters are part of a network of coastal lagoons that parallel the south shore of the Long Island coast from Breezy Point, off the tip of southern Manhattan, over 100 miles east to South Hampton. Fire Island lies in the middle of this complex system. The bays are uniformly shallow with an average depth of 1.2 meters (4 feet) and are generally characterized as poorly flushing due to restricted inlet tidal exchange.

From a regional perspective, Fire Island National Seashore includes the highest percentage of remaining undeveloped barrier islands of the south shore of the Long Island barrier island system. Extensive salt marshes, inter-tidal flats, and the broad shallow margins of the coastal bays within and adjacent to Fire Island are key components of an estuarine system crucial to the maintenance of regional biological diversity and ecosystem health.

Fire Island National Seashore provides important habitat for a number of federally listed threatened and endangered species, including but not limited to the peregrine falcon, roseate tern, loggerhead, Kemp's ridley, leatherback, hawksbill, and green sea turtles, bald eagle, piping plover, and sea beach amaranth. Of these species, the National Seashore provides critical habitat for piping plover and sea beach amaranth and is a focal point for North Atlantic conservation and restoration efforts. The eastern 8 miles of the park provide the most favorable conditions for piping plover breeding activity and

support a majority of the local population of the species.

In addition to the piping plover, the National Seashore provides important habitat for a multitude of bird species throughout the year. The island is renowned for the autumn migration of hawks and abundance of wintering waterfowl and is of critical importance as wintering, staging, and breeding habitat for myriad of bird species. Shorebirds, colonial waterbirds, neotropical migratory songbirds, and a variety of wading birds intensively utilize park habitats, and in general, occur in greater abundance and diversity than on the adjacent mainland.

The coastal waters within Fire Island National Seashore are regularly used by a variety of marine mammals on a seasonal or transitory basis. More than fifteen species have been documented in the National Seashore, all of which are protected under the Marine Mammal Protection Act of 1972. The most commonly observed species are seals, harbor porpoise, and bottlenose dolphin, generally occurring in ocean nearshore waters. Seals are most commonly observed during the fall and winter months, while bottlenose dolphins are present largely during the summer.

Oceanic and estuarine waters and their associated animal and plant life (biota) also play a dominant role in recreational use of the National Seashore. Over 90 percent of visits to the park involve the use of aquatic habitats. The primary recreational activities include swimming, walking, sightseeing, wildlife photography and observation, picnicking, and saltwater fishing.

Purpose of Fire Island National Seashore

Fire Island National Seashore was authorized on September 11, 1964 (Public Law 88–587) ''for the purpose of conserving and preserving for the use of future generations certain relatively unspoiled and undeveloped beaches, dunes, and other natural features within Suffolk County, New York, which possess high values to the Nation as examples of unspoiled areas of great natural beauty * * * to establish an area to be known as the 'Fire Island National Seashore.' ''

The purposes of Fire Island National Seashore, as stated in its *Strategic Plan* (available at *http://www.nps.gov/fiis/stratplanFY01–05.htm*), are as follows:

- Preserve the natural and cultural resources within administrative boundaries.
- Permit hunting, fishing, and shellfishing within boundaries in accordance with U.S. and New York State laws.
- Preserve the Sunken Forest tract from bay to ocean without developing roads therein.
- Preserve the main dwelling, furnishings, grounds, and outbuildings of the William Floyd Estate, home of the Floyd family for eight generations.
- Administer mainland ferry terminal and headquarters sites not to exceed 12 acres on the Patchogue River.
- Preserve the Otis Pike Fire Island High Dunes Wilderness.
- Provide for public access, use, and enjoyment.
- Work with the communities within the park to mutually achieve the goals of both the park and the residents.

Authority and Jurisdiction

The National Park Service is granted broad authority under 16 U.S.C. 1 *et seq.*, the NPS' ''Organic Act,'' to regulate the use of the Federal areas known as national parks. In addition, the Organic Act (16 U.S.C. 3) authorizes 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 Fire Island National Seashore

PWC use at Fire Island National Seashore is a relatively recent phenomenon, paralleling the national trend of increasing popularity and sales of PWC during the 1980s and 1990s.

Personal watercraft use began within the Fire Island National Seashore boundaries in the Great South Bay over 20 years ago, as soon as they were available and on the market. PWC users can access Fire Island National Seashore in a variety of ways; however, there are no public boat ramps or public roads located within the National Seashore boundaries. PWC users access the National Seashore via marinas located in the private communities and by landing on and launching from undeveloped beaches or larger vessels.

A variety of sources within the region provided estimates of typical PWC use in the Great South Bay and Fire Island NationalSeashore area. Staff from the Suffolk County Department of Parks and the Police Marine Bureau, local municipalities, local dealerships, and local marinas provided estimates of PWC use ranging from 5 to 25% of all watercraft on the water at any given time of the day during peak season. Although no annual counts are conducted of visitors accessing the park by boat or personal watercraft, the National Park Service conducted an informal survey on Saturdays and Sundays during the month of July 1999. During this survey, NPS staff counted the number of boats, including PWC, that were present. Based on the 1999 survey, the estimated number of boats during that time period was between 200 and 300 watercraft. Approximately 20% of the total, or between 40 and 60 watercraft, were PWC. The waterways on the bayside of Fire Island are often congested, with a variety of recreational and fishing boats accessing the waters of the National Seashore from the Great South Bay.

PWC use is typically localized within Fire Island National Seashore, occurring in areas near the private communities, ferryways and navigation channels, and in areas near boat ramps. Park staff indicate that the heaviest usage and highest general visitation area for watercraft of any type is the western end of the island. PWC use is also prevalent along the eastern boundary in Moriches Bay near Smith Point County Park.

As previously stated, on April 20, 2000, the NPS adopted a final rule for managing PWC use in areas of the National Park System. The rule was implemented to ensure a prudent approach to PWC management that would potentially allow their use, yet protect park resources, sensitive natural areas, plants and wildlife, and reduce conflicts between park visitors. The final rule prohibited PWC use in all National Park System areas unless the NPS determined that this type of water-based activity was appropriate for a

specific park based upon the legislation establishing the area, the park's resources and values, other visitor uses of the area, and overall management objectives.

Prior to April 22, 2002, PWC use was allowed throughout FireIsland National Seashore. On April 22, 2002 all of the waters within the National Seashore were closed to PWC use consistent with the 2000 NPS PWC rule (36 CFR 3.24).

Resource Protection and Public Use Issues

Fire Island National Seashore Environmental Assessment

In September 2002 NPS posted on its Web site*(http://ww.nps.gov/fiis/)* the *Personal Watercraft UseEnvironmental Assessment* for Fire Island National Seashore. The purpose of the environmental assessment was to evaluate a range of alternatives and strategies for the management of PWC use at Fire Island National Seashore to ensure the protection of park resources and values while offering recreational opportunities as provided for in the National Seashore's enabling legislation, purpose, mission, and goals. In March 2004 an errata was issued. The changes to the environmental assessment were made to modify the preferred alternative and its analysis, to address public comments, and to clarify the text.

The environmental assessment evaluated four alternatives concerning the use of PWC at Fire Island National Seashore. The alternatives considered included three alternatives to continue PWC use under certain conditions: Alternative A would establish, through regulation, the PWC policies that existed prior to 2000 when PWC use was permitted throughout Fire Island NationalSeashore; alternative B would limit PWC use to areas adjacent to beach communities; and modified alternative C would continue to allow PWC *access to the national seashore with additional management and geographic restrictions.* The additional geographic restrictions west of Sunken Forest would include a 1,000 foot buffer around all shorelines, with access to beach communities only through established access channels and ferryways. East of the western boundary of Sunken Forest PWC use would be forbidden in Seashore waters, except for access to beach communities only through established access channels and ferryways. In addition, a no-action alternative was considered that would discontinue all PWC use within the National Seashore. The four alternatives were evaluated with respect to PWC impacts on water quality, air quality, soundscapes, wildlife, wildlife habitat, shoreline vegetation, visitor conflicts, and visitor safety.

Based on the analysis NPS determined that modified alternative C is the environmentally preferred alternative. (For the remainder of this document ''alternative C'' refers to modified alternative C.) Alternative C best fulfills NPS responsibilities as trustee of Fire Island National Seashore's 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. Alternative C is the preferred alternative for fulfilling the park's environmental mission without restricting valid and lawful use. This document proposes regulations to implement alternative C at Fire Island National Seashore.

The following summarizes the predominant resource protection and public use issues associated with PWC use at Fire Island National Seashore. Each of these issues was analyzed in the *Fire Island National Seashore, Personal Watercraft Use Environmental Assessment,* which was posted to the Fire Island National Seashore Web site on September 3, 2002 *(http://www.nps.gov/fiis/).*

Water Quality

The main issues associated with PWC use and water resources at Fire Island are those related to water quality. Chemical impacts on water quality result from PWC emissions of hydrocarbons including benzene, toluene, ethylbenze, xylene (BTEX), polycyclic aromatic hydrocarbon (PAH) and of methyl tertiary butyl ether (MTBE) directly into the water. Yet, the impacts on water quality from pollutants vary according to the PWC use areas. Areas of high tidal flushing dispel pollutants faster than areas of low tidal flushing. Fire Island's inlets experience very high flushing while its bays experience low flushing. Thus, toxic pollutants remain in the bays for longer periods of time than they do in the inlets.

The majority of locations proposed for continued use by PWC are located in the western area of the park between Fire Island Inlet and Sunken Forest. Because the allowed use areas under the proposed rule are surrounded by Great South Bay, an extensive area of water both within and outside park jurisdiction, the actual mixing/dilution volumes would be substantially greater than in the PWC restricted use areas. As such, allowing PWC use in only these areas will have negligible to minor adverse impacts on water quality. When analyzed in relation to all vessels in these areas, the cumulative impacts of all vessels will be negligible to moderate adverse.

Air Quality

PWC emit various compounds that pollute the air even though the exhaust is usually routed below the waterline. As much as one third of the fuel delivered to current two-stroke PWC remains unburned and is discharged as gaseous hydrocarbons (HC); the lubricating oil is used and expelled as part of the exhaust; the combustion process results in emissions of air pollutants such as volatile organic compounds (VOC), nitrogen oxides (NO_X), particulate matter (PM), and carbon monoxide (CO).

NPS analyzed two categories of airborne pollution impacts: impacts on human health and impacts on air quality related values in Fire Island. Pollutants emitted from PWC that affect human health include VOC and NO_X, which in sunlight form ozone. Ozone can cause or contribute to respiratory illness. Carbon monoxide (CO) also affects humans by interfering with the oxygen carrying capacity of blood.

With regard to impacts on human health, continuation of PWC use in the locations proposed at Fire Island would result in minor adverse impacts for CO and NO_X and negligible adverse impacts for PM. For VOC emissions the impact would be major adverse in 2002, decreasing to moderate adverse by 2012 due to improved emission controls. When considering cumulative emissions from all boating activities in both 2002 and 2012 the result would be negligible adverse impacts for $PM_{10,}$ moderate adverse impacts for NO_X, and major adverse impacts for CO andVOC.

Soundscapes Values

Studies by many organizations on different types of PWC have found noise levels associated with PWC to vary and range from about 80 to 102 dB. However, unlike motorboats, PWC are highly maneuverable and are used for activities such as wave jumping, which often result in quickly varying noise levels due to changes in acceleration and exposure of the jet exhaust when crossing waves. The frequent change in pitch and noise levels, especially if operated closer to land, make the noise from PWC more noticeable to human ears.

One of the Seashore's natural resources is the natural soundscape, also referred to as ''natural ambient

sounds'' or ''natural quiet.'' The natural soundscape includes all of the naturally occurring sounds of the National Seashore. Conversely, ''noise'' is defined as unwanted sound. Sounds are described as noise if they interfere with an activity or disturb the person hearing them. The level of sound generated by watercraft using the National Seashore area is expected to affect recreation users differently. For example, visitors participating in less sound-intrusive activities such as bird watching and hiking would likely be more adversely affected by PWC noise than another PWC or motorboat user.

The proposed rule would require PWC users to operate at flat wake speeds (maximum 6 mph) within ferryways and navigation channels, which would reduce PWC-generated noise levels. Impacts would be negligible adverse under the proposed rule. PWC operating at an idle would also reduce noise levels farther from the shoreline. Noise reductions 1,000 feet from shore and beyond in the area west of Sunken Forest would be substantial since PWC would be required to stay at least 1000′ offshore with the exception of marked ferryways and navigation channels in the communities. East of the Sunken Forest PWC would be excluded from the waters of the seashore or approximately 4000′ offshore.

The cumulative adverse impact of boating noise, ambient noise levels, and PWC use (where permitted) would continue to range from negligible to minor, depending on the location of the hearer. As with alternative B, under the proposed rule noise from personal watercraft and other boats would have negligible to minor adverse impacts on other recreational users at other locations within the National Seashore.

Removing PWC use from many areas of the National Seashore, as well as implementing a 1,000-foot buffer zone, would result in negligible adverse impacts. Specifically, noise from PWC and motorized boat use within and near the National Seashore would have negligible to minor adverse impacts on other recreational users at other locations within the National Seashore.

Submerged Aquatic and Shoreline Vegetation

PWC have the potential to impact submerged aquatic vegetation and shoreline vegetation as a result of operating in shallow waters or adjacent to wetland habitats.

Submerged aquatic vegetation (SAV) benefit the aquatic ecosystems because they provide a protective habitat for fish and shellfish; food for waterfowl, fish, and mammals; and aid in oxygen production; absorb wave energy and nutrients; and improve the clarity of the water. In addition, SAV beds stabilize bottom sediments and reduce suspended sediments present in the water column.

Under the proposed rule, PWC use would be limited to beach community access channels and ferryways east of Sunken Forest. Users would have to stay 1,000 feet away from any shoreline (including smaller island shorelines) in the area west of Sunken Forest, except for in the navigation channels and ferryways. PWC users operating in navigation channels and ferryways would be required to maintain a flat-wake speed. PWC are not allowed within the National Seashore boundaries east of the western boundary of the Sunken Forest with the exception of navigation channels into the communities.

Direct impacts on shoreline vegetation from PWC use are expected around landing areas. Impacts on wetland vegetation and habitat are expected to be beneficial because no PWC use would be allowed within 1,000 feet of any shoreline in the National Seashore. Effects to shoreline vegetation associated with PWC use under the proposed rule are expected to be short term and minor.

Adverse direct cumulative effects associated with increased future PWC and other motorized watercraft use are expected to be minor. Impacts on shoreline vegetation around landing areas associated with foot traffic would continue. Cumulative beneficial impacts on shoreline vegetation associated with the wetland habitats are expected due to the 1,000-foot buffer zone.

Short-term, minor impacts on shoreline vegetation would result primarily from foot traffic associated with PWC access to beach areas. PWC may access shoreline areas in community marinas that are not bulkheaded and would not have any restrictions on them coming ashore. Outside of these areas, no beach access would be permitted. Impacts on tidal wetland habitats are expected to be beneficial as a result of restricting PWC use within 1,000 feet of any shoreline.

Wildlife and Habitats

Some research suggests that PWC impact wildlife by interrupting normal activities, causing alarm or flight, causing animals to avoid habitat, displacing habitat, and affecting reproductive success. PWC may have a greater impact on waterfowl and nesting birds because of their noise, speed, and ability to access shallow-water areas more readily than other types of watercraft. Literature suggests that PWC can access sensitive shorelines, disrupting riparian habitat areas critical to wildlife.

Impacts on wildlife from PWC use would be short term and minor because species sensitive to noise and human activity are not expected to regularly occur in these areas during high use periods. Prohibiting PWC use over a large area of the National Seashore would have short- and long-term, minor, beneficial impacts on wildlife and habitat in the closed areas. Implementing flat wake zones in ferryways and navigation channels would minimize the potential for collisions with wildlife. Restricting PWC access to most of the shallow water habitat along the National Seashore would also enhance the quality of essential fish habitats in these areas, a long-term beneficial impact.

Discontinuing PWC use over a large percentage of the National Seashore and implementing flat wake zones in ferryways and navigation channels would have minor, beneficial impacts on wildlife and wildlife habitat over the short and long term. Wildlife using closed areas adjacent to PWC use areas could be affected by noise and possible water quality impacts from PWC use in adjacent areas; however, such effects are expected to be negligible.

Threatened and Endangered Species and Species of Concern

Numerous Federal and State listed threatened and endangered species and protected species utilize habitats within Fire IslandNational Seashore on either a permanent, seasonal, or transitory basis. Federally listed species documented on Fire Island include the piping plover, bald eagle, loggerhead sea turtle, the seabeach amaranth, and others.

Threatened or endangered species in the area of Fire Island National Seashore are not likely to be adversely affected by PWC use under the proposed rule. Speed limit restrictions within the channels, closures within the 1,000 foot buffer and closed areas where sensitive shorebird nesting areas are most likely to occur, would reduce the potential for adverse effects. Sea turtles are not likely to be adversely affected by PWC use because the first 1,000 feet from the shore would be closed and they are expected to avoid high use areas as a result of noise and activity. Foraging activities of bald eagles and peregrine falcons could potentially be affected by PWC use. However, because these birds are typically present at a time of year when PWC use is low, adverse effects are not likely. Also, restricting PWC use within 1,000 feet of any shoreline would

further minimize potential impacts on sensitive species. Potential effects on the seabeach amaranth are expected to be minimal because foot traffic associated with PWC use would occur only in community marina beach areas where the plant does not occur.

Visitor Experience

To determine impacts, the current level of PWC use was calculated at locations throughout the National Seashore where PWC use is known to occur. Other recreational activities and the type of visitor experiences that are proposed in these locations were also identified. Visitor surveys (if available) and staff observations were also evaluated to determine visitor attitudes and satisfaction in areas where personal watercraft are encountered.

Data suggest that the vast majority of visitors are satisfied with their current experiences. The potential for change in visitor experiences was evaluated by identifying projected increases or decreases in both PWC and other visitor uses, and by determining whether these projected changes would affect the desired visitor experience and result in greater safety concerns or additional user conflicts.

The proposed rule would have minor beneficial impacts on the experiences of visitors other than PWC users. There would be a minor to moderate adverse impact to PWC users as a consequence of closing areas of the National Seashore to PWC use east of the Sunken Forest, prohibiting use elsewhere within the 1,000-foot buffer zone, and requiring flat wake speed limits in ferryways and navigation channels. However, PWC users would still be allowed to operate outside the restricted areas and flat wake zones at the west end of the island.

Cumulative impacts for all PWC users in the region would be negligible to minor because other nearby areas would remain open to PWC use. Impacts on other boaters and visitors would be negligible since there would be little noticeable change in overall visitor experiences. It is likely that most visitors would continue to be satisfied with their experiences at the National Seashore.

Visitor Conflicts and Safety

PWC comprise 9% of all registered ''vessels'' in the United States, but are involved in 36% of all boating accidents. In part, this is believed to be a boater education issue (*i.e.*, inexperienced riders lose control of the craft), but it also is a function of the PWC operation (*i.e.*, no brakes or clutch; when drivers let up on the throttle to avoid a collision, steering becomes difficult). Newer models will reportedly have improved safety devices such as better steering and braking systems, however, it will take time to infuse the market with these types of newer machines.

Although a study conducted by National Transportation Safety Board indicates PWC related fatalities will increase in the United States, PWC related fatalities in the Fire Island National Seashore area have been few in recent years.

Under the proposed rule, PWC use would be limited to beach community access channels and ferryways east of Sunken Forest. Users would have to stay 1,000 feet away from any shoreline (including smaller island shorelines) in the area west of Sunken Forest, except in the access channels and ferryways. An additional management restriction would be the requirement to operate at flat wake speeds within ferryways and navigation channels within the seashore boundary.

The potential for impacts on visitor safety resulting from PWC use would be eliminated in areas where PWC use would no longer be allowed and would be further reduced in the ferryways and navigation channels as a result of the flat wake regulation. Swimmers would benefit from restrictions on PWC use.

Depending on the type of activity and its location, potential cumulative impacts on visitor safety would be negligible. Boaters utilizing waters outside the park could be adversely affected to the extent that increased PWC use in these waters would conflict with their activities. Some beneficial impacts would result from restrictions on PWC use and subsequent fewer conflicts and accidents.

The proposed rule would eliminate the potential for PWC-related accidents within the restricted use areas of the National Seashore. Flat wake restrictions in the ferryways and navigation channels would reduce the potential for accidents to negligible to possibly minor adverse impacts.

An increased potential for accidents between PWC users and other boaters could occur outside NPS waters.

The Proposed Rule

As established by the April 2000 National Park Service rule, PWC use is prohibited in all National Park System areas unless determined appropriate. The process used to identify appropriate PWC use at Fire Island National Seashore considered the known and potential effects of PWC on park natural resources, traditional uses, public health and safety. The proposed rule is designed to manage PWC use within the National Seashore in a manner that achieves the legislated purposes for which the park was established while providing reasonable access to the park by PWC.

The use of motor vessels is a traditional method of accessing Fire Island or land-based recreational activities. Therefore, providing PWC owners with this opportunity is considered both desirable and compatible with park purposes, assuming that such use would not result in unacceptable impacts. To identify areas of potential use, the effects of PWC use were evaluated against a number of resource and public use issues. Given the high value and significance of National Seashore resources, a precautionary approach was employed. Only those areas with minimal, if any, potential for resource and visitor use impacts were selected. A summary of the issues considered and evaluation results are presented previously under ''Resource Protection and Public Use Issues.''

Under proposed § 7.20(d) the NPS would continue to allow PWC in the areas west of Sunken Forest but will be enforcing a 1,000-foot closed area along the shoreline fronting communities and National Seashore lands. Areas east of Sunken Forest would be closed to PWC use, except that PWCs would be able to use designated channels to access the communities within the boundary of the park. Both east and west of Sunken Forest PWC access would have speed limits of no greater than flat-wake speed via the ferry and navigation channels that access the communities. State and local regulations for travel in ferry channels would also be enforced. All the channels that provide access to the communities are marked with buoys regulated by the U.S. Coast Guard and all the channels are identified on NOAA navigation charts.

Specifically, PWC users would be allowed to operate in:

- Great South Bay from the western boundary of the national seashore adjacent to Robert Moses State Park, east to the western boundary of the Sunken Forest, excluding any area within 1,000 feet of the shoreline, including East Fire Island and West Fire Island.
- Navigation channels marked by buoys and identified on the NOAA navigational chart (12352) to include access channels to and from Fair Harbor, Dunewood, Lonelyville, Atlantique, Cherry Grove, Fire Island Pines, Davis Park, Moriches Inlet, and to the communities of Kismet, Saltaire, Ocean Beach, Ocean Bay Park, Point O'Woods, Oakleyville, and Water Island

at ''flat-wake speed'' (maximum of 6 mph).

• The Long Island Intracoastal Waterway within the park boundaries.

Also included in proposed § 7.20(d) is a requirement that PWC operating in ferryways and navigation channels would be required to maintain a flat wake speed. All local, state, and federal laws and regulations relative to PWC use would remain in effect and be enforced by the park.

Areas open to PWC use have physical and biological characteristics that minimize the potential for adverse impacts on park resources and values, and are located immediately adjacent to Fire Island population centers that currently experience high levels of general boat traffic. The intended effect is to provide island access for persons wanting to use a PWC to travel to the National Seashore or for persons for whom a PWC is the only form of water access to Fire Island.

The closure of most National Seashore waters to PWC use does not adversely affect the public's ability to operate PWC in the region as a whole. More than three fourths of the Great South Bay, and a little less then half of the waters of Narrows Bay and Moriches Bay are outside National Park Service jurisdiction. These areas are currently available to PWC and constitute alternative use areas for operators who had previously utilized waters within the National Seashore that are now closed.

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. The National Park Service has completed the report ''Economic Analysis of Personal Watercraft Regulations in Fire Island National Seashore'' (Law Engineering and Environmental Sciences, Inc.) dated March 2002. The report found that this proposed rule will not have a negative economic impact. In fact this rule, which will not impact local PWC dealerships and rental shops, may have an overall positive impact on the local economy. This positive impact to the local economy is a result of an increase of other users, most notably canoeists, swimmers, anglers and traditional boaters seeking solitude and quiet, and improved water quality.

(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 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 raises novel policy issues. This regulation is one of the special regulations being issued for managing PWC use in National Park Units. The National Park Service published the 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 requirements 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 document 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 upon the finding in a report prepared by the National Park Service entitled, ''Economic Analysis of Personal Watercraft Regulations in Fire Island National Seashore''(Law Engineering and Environmental Sciences, Inc., March 2002). The focus of this study was to document the impact of this rule on two types of small entities, PWC dealerships and PWC rental outlets. This report found that the potential loss for these types of businesses as a result of this rule would be minimal to none.

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. The National Park Service has completed an economic analysis to make this determination. This 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 imposes no 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 taking implications. A taking implication assessment is not required. No takings 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 and only allows use within a small portion 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 open for public

review and comment from September 3, 2002, to November 11, 2002. A copy of the EA and the errata is available by contacting the Superintendent, Fire Island National Seashore,120 Laurel Street, Patchogue, New York 11772. E-mail: *michael_bilecki@nps.gov,* Fax: (631) 289–4898, or on the Internet at *http://www.nps.gov/fiis/pwc/pwc.htm.*

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.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, § 7.20 Fire Island National Seashore.) (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. E-mail: *Execsec@ios.doi.gov.*

Drafting Information

The primary authors of this regulation are: Wayne Valentine, Chief Ranger; Michael Bilecki, Chief of Resource Management, Fire Island National Seashore; Sarah Bransom, Environmental Quality Division; and Kym Hall, Special Assistant.

Public Participation

If you wish to comment, you may submit your comments by any one of several methods. You may mail written comments to: Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York 11772, comment by electronic mail to: *michael_bilecki@nps.gov,* or comment by Fax at: (631) 289–4898. Please also include ''PWC rule'' in the subject line and your name and return address in the body of your Internet message. Finally, you may hand deliver comments to Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

List of Subjects in 36 CFR Part 7

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

For the reasons stated in the preamble, the National Park Service proposes to amend 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 § 7.20 to read as follows:

§ 7.20 Fire Island National Seashore.

* * * * *

(d) *Personal watercraft.* (1) Personal watercraft (PWC) may operate in the following locations and under the following conditions:

(i) Great South Bay from the western boundary of the national seashore adjacent to Robert Moses State Park, east to the western boundary of the Sunken Forest, excluding any area within 1,000 feet of the shoreline, including the area surrounding East Fire Island and West Fire Island.

(ii) Navigation channels marked by buoys or identified on the NOAA navigational chart (12352) to include access channels to and from Fair Harbor, Dunewood, Lonelyville, Atlantique, Cherry Grove, Fire Island Pines, Davis Park, Moriches Inlet, Kismet, Saltaire, Ocean Beach, Ocean Bay Park, Point O'Woods, Oakleyville, and Water Island.

(iii) The Long Island Intracoastal Waterway within the park boundaries.

(iv) At ''flat wake'' speeds (maximum 6 mph) within designated marked channels to access town/community docks and harbors/marinas.

(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: August 12, 2004.

Paul Hoffman,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–19189 Filed 8–20–04; 8:45 am]

BILLING CODE 4312–52–P