

a taxable year beginning after December 31, 2004, and ending before September 7, 2006 is filed before October 10, 2006, and the taxpayer is not filing an amended Federal income tax return for that taxable year pursuant to paragraph (g)(2) of this section before the taxpayer's next filed original Federal income tax return, see paragraphs (d)(3)(iv) and (f)(7) of this section for the statements that must be attached to the taxpayer's next filed original Federal income tax return.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 4.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

■ **Par. 5.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

### § 602.101 OMB control numbers.

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(b)	*	*	*	
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CFR part or section where identified and described		Current OMB control No.		
1.45G-1T .....	1545-			
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**Mark E. Matthews,**  
Deputy Commissioner for Services and Enforcement.  
**Eric Solomon,**  
Acting Deputy Assistant Secretary of the Treasury (Tax Policy).  
[FR Doc. E6-14858 Filed 9-7-06; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 7

**RIN 1024-AD44**

### Cape Lookout National Seashore, Personal Watercraft Use

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule designates areas where personal watercraft (PWC) may be used to access Cape Lookout National Seashore, North Carolina. This final 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. Individual parks must 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: Effective Date:** This rule is effective September 8, 2006.

**ADDRESSES:** Mail inquiries to Superintendent, Cape Lookout National Seashore, 131 Charles Street, Harkers Island, NC 28531.

**FOR FURTHER INFORMATION CONTACT:** Jerry Case, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 7241, Washington, DC 20240. Phone: (202) 208-4206. E-mail: [jerry\\_case@nps.gov](mailto:jerry_case@nps.gov).

### SUPPLEMENTARY INFORMATION:

#### Background

##### *Personal Watercraft Regulation*

On March 21, 2000, the NPS published a regulation (36 CFR 3.24) on the management of PWC use within all units of the national park system (65 FR 15077). The 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 for 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 Cape Lookout National Seashore*

Cape Lookout National Seashore was established by Congress in 1966 to conserve and preserve for public use and enjoyment the outstanding natural, cultural, and recreational values of a dynamic coastal barrier island environment for future generations. Cape Lookout National Seashore is a low, narrow, ribbon of sand located three miles off the mainland coast in the central coastal area of North Carolina and occupies more than 29,000 acres of land and water from Ocracoke Inlet on the northeast to Beaufort Inlet to the southwest. The national seashore consists of four main barrier islands

(North Core Banks, Middle Core Banks, South Core Banks, and Shackleford Banks), which consist mostly of wide, bare beaches with low dunes covered by scattered grasses, flat grasslands bordered by dense vegetation, and large expanses of salt marsh alongside the sound. Congressionally established boundaries include 150' of water from the mean low waterline on the sound side of all islands. There are no road connections to the mainland or between the islands.

Coastal barrier islands, such as those located in Cape Lookout National Seashore, are unique land forms that provide protection for diverse aquatic habitats and serve as the mainland's first line of defense against the impacts of severe coastal storms and erosion. Located at the interface of land and sea, the dominant physical factors responsible for shaping coastal landforms are tidal range, wave energy, and sediment supply from rivers and older, pre-existing coastal sand bodies. Relative changes in local sea level also profoundly affect coastal barrier island diversity. Coastal barrier islands exhibit the following six characteristics:

- Subject to the impacts of coastal storms and sea level rise.
- Buffer the mainland from the impact of storms.
- Protect and maintain productive estuarine systems which support the nation's fishing and shellfishing industries.
- Consist primarily of unconsolidated sediments.
- Subject to wind, wave, and tidal energies.
- Include associated landward aquatic habitats which the non-wetland portion of the coastal barrier island protects from direct wave attack.

Coastal barrier islands protect the aquatic habitats between the barrier island and the mainland. Together with their adjacent wetland, marsh, estuarine, inlet, and nearshore water habitats, coastal barriers support a tremendous variety of organisms. Millions of fish, shellfish, birds, mammals, and other wildlife depend on barriers and their associated wetlands for vital feeding, spawning, nesting, nursery, and resting habitat.

Shackleford Banks contains the park's most extensive maritime forest as well as wild horses that have adapted to this environment over the centuries. The islands are an excellent place to see birds, particularly during spring and fall migrations. A number of tern species, egrets, herons, and shorebirds nest here. Loggerhead turtles climb the beaches at nesting time.

### *Purpose of Cape Lookout National Seashore*

Cape Lookout National Seashore was authorized on March 10, 1966, by Public Law 89-366. Additional legislation, Public Law 93-477 (October 26, 1974), called for another 232-acre tract of land to be acquired, a review and recommendation of any suitable lands for wilderness designation, and authorized funding for land acquisition and essential public facilities.

The purpose of Cape Lookout National Seashore is to conserve and preserve for public use and enjoyment the outstanding natural, cultural, and recreational values of a dynamic coastal barrier island environment for future generations. The national seashore serves as both a refuge for wildlife and a pleasuring ground for the public, including developed visitor amenities.

The mission of Cape Lookout National Seashore is to:

- Conserve and preserve for the future the outstanding natural resources of a dynamic coastal barrier island system;
- Protect and interpret the significant cultural resources of past and contemporary maritime history;
- Provide for public education and enrichment through proactive interpretation and scientific study; and
- Provide for sustainable use of recreation resources and opportunities.

### *Significance of Cape Lookout National Seashore*

Cape Lookout National Seashore is nationally recognized as an outstanding example of a dynamic natural coastal barrier island system. Cape Lookout is designated as a unit of the Carolinian-South Atlantic Biosphere Reserve, United Nations Educational, Scientific and Cultural Organizations (UNESCO) Man and the Biosphere Reserve Program. The park contains:

- Cultural resources rich in the maritime history of humankind's attempt to survive at the edge of the sea; and
- Critical habitat for endangered and threatened species and other unique wildlife including the legislatively protected wild horses of Shackleford Banks.

### *Authority and Jurisdiction*

Under the National Park Service Organic Act of 1916 (Organic Act) (16 U.S.C. 1 *et seq.*) Congress granted the NPS broad authority to regulate the use of the Federal areas known as national parks. In addition, the Organic Act 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 \* \* \*" (16 U.S.C. 3).

As with the United States Coast Guard (USCG), NPS's regulatory authority over waters subject to the jurisdiction of the United States, including navigable waters and areas within their ordinary reach, derives from the U.S. Constitution. In regard to the NPS, based upon the Property and Commerce Clauses, 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.

Motorboats and other watercraft have been in use at Cape Lookout National Seashore since the park was established in 1966. It is unknown when PWC use first began at the national seashore. In compliance with the settlement with Bluewater Network, the national seashore closed to PWC use in April 2002. Personal watercraft are prohibited from launching or landing on any lands, boat ramps or docks within the boundaries of the national seashore. Personal watercraft may not be towed on trailers or carried on vehicles within national seashore boundaries except at the Harker's Island unit. This closure pertains to all of the barrier islands within the national seashore and the waters on the soundside of the islands within 150 feet of the mean low waterline. Outside of the park boundary, PWC use is governed by North Carolina PWC regulations. At present, the areas that were previously used by PWC owners for landing are closed with signs.

Prior to the PWC closure, all areas of the park were open to PWC use. However, the majority of PWC use was concentrated in two areas of the national seashore that receive the heaviest visitor day-use in the park: (1) On the sound-side of South Core Banks at the Lighthouse (from the Lighthouse dock through Barden Inlet and Lookout

Right), and (2) the Shackleford Banks from Wade Shores west to Beaufort Inlet. Personal watercraft use of ocean beaches was rare due to rough surf conditions in the ocean and the hazard of beaching PWC in the ocean surf. Some PWC use occurred along North and South Core Banks from Portsmouth Village at the northern end of the national seashore to the lighthouse. This use was infrequent because of the prevalence of marshes and general lack of sound-side beaches along Core Banks, the large expanse of open water in Core Sound between the barrier islands and mainland North Carolina, and the low population of the adjacent communities in the "down east" as this portion of the national seashore is known locally. At public meetings held in October 2001, several participants indicated they had used their PWC to travel from locations such as Atlantic and Davis to the barrier islands.

The popularity of Cape Lookout and Shackleford Banks where PWC use was concentrated can be attributed to the excellent soundside beaches in these areas, the attraction of the Cape Lookout lighthouse, traditional use of Shackleford Banks, their proximity to major inlets, and their close proximity to the three largest coastal population centers in Carteret County: Atlantic Beach, Morehead City, and Beaufort.

### **NPRM and Environmental Assessment**

On December 29, 2005, the National Park Service published a Notice of Proposed Rulemaking (NPRM) for the operation of PWC at Cape Lookout National Seashore (70 FR 77089). The proposed rule for PWC use was based on alternative B (one of three alternatives considered) in the Environmental Assessment (EA) prepared by NPS for Cape Lookout National Seashore. The EA was open for public review and comment from January 24, 2005 to February 24, 2005. Copies of the EA may be downloaded at <http://www.nps.gov/calo/parkplan.htm>.

The purpose of the EA was to evaluate a range of alternatives and strategies for the management of PWC use at Cape Lookout 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. The analysis assumed alternatives would be implemented beginning in 2003 and considered a 10-year period, from 2003 to 2013.

The EA evaluated three alternatives concerning the use of PWC at Cape Lookout National Seashore. The alternatives considered include:

- *No-Action Alternative:* Do not reinstate PWC use within the national seashore. No special regulation would be promulgated.

- *Alternative A:* Reinstate PWC use as previously managed under a special regulation.

- *Alternative B:* Reinstate PWC use under a special NPS regulation with additional management prescriptions.

Based on the analysis prepared for PWC use at Cape Lookout National Seashore, alternative B is considered the environmentally preferred alternative because it best fulfills park responsibilities as trustee of sensitive habitat; ensures safe, healthful, productive, and aesthetically and culturally pleasing surroundings; and attains a wider range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences.

This final rule contains regulations to implement alternative B at Cape Lookout National Seashore.

### Summary of Comments

A proposed rule on PWC use in the Cape Lookout National Seashore (Cape Lookout) was published in the **Federal Register** for public comment on December 29, 2005, with the comment period lasting until February 27, 2006. NPS received 1,685 timely written pieces of correspondence regarding the EA and proposed regulation. Of the pieces of correspondence, 5 were from government agencies, 11 were from businesses, conservation groups, or recreation groups, and 1,669 were from unaffiliated individuals. A total of 148 comments supported alternative A, 25 comments supported alternative B, 4 comments opposed alternative B, 1519 comments supported the no action alternative, and 11 comments opposed the no action alternative. Within the analysis, 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 suggested that the access restrictions, closures, and boating rules should be applied equally to all motorized vessels, and not just to PWC.

*NPS Response:* As described under the Scope of the Analysis in the Purpose and Need section of the EA, the focus of the EA is to define management alternatives specific to PWC use. The plan analyzed a variety of impact topics to determine if personal watercraft use was consistent with the park's enabling

legislation and management goals and objectives. The goal of the EA was not to determine if these restrictions should also be applied to boats. Cape Lookout will consider subsequent rulemaking to address this issue for other watercraft and if subsequent rulemaking proceeds, that action would be subject to NEPA analysis and public comment.

2. One commenter stated that there is a lack of site-specific data in the EA.

*NPS Response:* The scope of the EA did not include the conduct of site-specific studies regarding potential effects of PWC use on wildlife species, submerged aquatic vegetation beds, or visitor experience at Cape Lookout National Seashore. Analysis of potential impacts of PWC use on wildlife, submerged aquatic vegetation beds, and visitor experience at the national seashore was based on best available data, input from park staff, and the results of analysis using that data.

3. One commenter stated that the current EA does not discuss 40 CFR 1502.22 of the Council on Environmental Quality (CEQ) National Environmental Policy Act (NEPA) Regulations, which tells agencies that they have to make it clear when information is incomplete or unavailable.

*NPS Response:* The EA discusses § 1502.22 of the CEQ NEPA Regulations in the Environmental Consequences section under the Summary of Laws and Policies on page 92. The EA mentions in several places that data is unavailable or had not been collected, including soundscapes and wildlife and wildlife habitat sections. Best available data, literature, and consultation with subject matter experts were used to determine impacts, as disclosed in the EA.

4. One commenter stated that any attempt to bar PWC or disparately regulate PWC would transgress NPS' regulatory duties and would be arbitrary and capricious in light of the EA's findings.

*NPS Response:* Cape Lookout National Seashore was established in 1966. The purpose of Cape Lookout is to conserve and preserve for public use and enjoyment the outstanding natural, cultural, and recreational values of a dynamic coastal barrier island environment for future generations. The preferred alternative meets the objectives of the national seashore to a large degree, as well as meeting the purpose and need for action, and therefore is within the legislative and regulatory duties of Cape Lookout National Seashore.

5. One commenter stated that PWC use conflicts with NPS' mission and purpose.

### NPS Response: Cape Lookout

National Seashore was established to conserve and preserve for public use and enjoyment the outstanding natural, cultural, and recreational values of a dynamic coastal barrier island environment for future generations. The national seashore serves as both a refuge for wildlife and a pleasure ground for the public, including developed visitor amenities. Under this regulation PWC use is limited to providing a means of transportation to the island for the user to enjoy the natural, cultural, and recreational values of Cape Lookout National Seashore.

6. One commenter stated that the EA relies upon incorrect information regarding PWC numbers in the U.S. and uses outdated data from 2001 to guide its decision making process.

*NPS Response:* A check of the National Marine Manufacturers Association (NMMA) Web site revealed that indeed, PWC numbers for the years 2000 and 2001 are higher than quoted in the EA. Regardless, these are nationwide PWC numbers that were not used in the impacts analysis. The numbers used in the impacts analysis were park-specific, based on available visitor data and observations by Cape Lookout National Seashore staff.

7. One commenter stated that NPS has miscalculated the population growth rate of PWC.

*NPS Response:* The numbers used in the impacts analysis were park-specific, based on available visitor data, park ranger counts in 2000 and 2001, and observations by seashore staff. They were not based on USCG data.

8. One commenter is concerned that the current EA is being politically manipulated in order to reauthorize PWC operation.

*NPS Response:* Due to the increased level of public comment, Cape Lookout reanalyzed the issues and impact topics described in the 2001 Determination in more detail in the EA. The 2001 Determination can be viewed at: <http://www.nps.gov/calo/parkplan.htm>. The results of the in-depth analysis in the EA indicated that impacts range from negligible to moderate for all impact topics, and the NPS chose alternative B as the preferred alternative.

9. One commenter stated that the Proposed Rule should be redrafted to incorporate the ban on PWC that exists outside of NPS General Regulation.

*NPS Response:* The ban or prohibition that exists at Cape Lookout is the result of NPS General Regulations that were promulgated in 2000 and took effect in 2002. This was a servicewide prohibition and affected all parks without special regulations. This

rulemaking, or special regulation, will open Cape Lookout to PWC use, with restrictions. Only parks with special regulations can allow PWC use.

10. One commenter stated that PWC are designated as Class A boats by the USCG, and are subject to the same rules and registration fees as all other powered craft.

*NPS Response:* Yes, and the NPS adopts applicable USCG regulations which are found in Title 33 CFR as well as applicable State laws and regulations within whose exterior boundaries a park is located. Therefore PWC are subject to the same rules and registration fees as all other powered craft.

11. One commenter asked why the PWC closure was rescinded in 2001, and why NPS wants to take the proposed action.

*NPS Response:* Due to the increased level of public comment and congressional interest, Cape Lookout rescinded the 2001 closure to allow the issues and impact topics described in the 2001 Determination to be considered in more detail in the EA. The 2001 Determination can be viewed at: <http://www.nps.gov/calo/parkplan.htm>. As described in the EA, alternative B is the preferred alternative because, with limitations on PWC use and other mitigation, impacts can be minimized and managed.

12. One commenter stated that the spread of exotic species related to PWC operation is overlooked in the EA.

*NPS Response:* This topic has been addressed in the errata to the EA as an issue that was considered but not further evaluated. After consultation with subject matter experts and available data, no exotic species are known to occur in areas accessible by PWC within Cape Lookout National Seashore.

13. One commenter disagrees with the cumulative impacts analysis.

*NPS Response:* NPS acknowledges that the area around Cape Lookout National Seashore is being developed and this may result in increased PWC use. However, the EA shows that allowing limited PWC access at Cape Lookout National Seashore, will not result in more than negligible to minor cumulative impact, even when all motor boats are included in the analysis.

14. The EA and rule text should be rewritten to state that all obligations and restrictions would be imposed on the PWC operator, not the PWC equipment. Organization of the rule should also be improved.

*NPS Response:* The text in the rule, errata to the EA, and the Finding Of No Significant Impact (FONSI) has been clarified to state that the restrictions

will be imposed on the PWC operator, not the PWC equipment. Organization of the rule has also been improved and text was clarified.

#### Comments Regarding Alternatives

15. One commenter stated that this environmental analysis could benefit greatly by constructing an alternatives matrix that shows on one axis the alternatives and on the other axis environmental conditions that might be affected.

*NPS Response:* Table A: Summary of the Impact Analysis on page v of the EA provides an overview of which resource topics would be affected by each alternative. Alternatives A and B would impact water quality, air quality, soundscapes, shoreline and submerged aquatic vegetation, wildlife, aquatic fauna, threatened and endangered species, visitor use and experience, visitor conflicts and safety, cultural resources, and socioeconomics. Under the no-action alternative, none of the impact topics would be impacted by PWC since they would be banned, but all of the impact topics would be impacted to some capacity because of the cumulative impacts from boats.

16. One commenter stated that the alternative to limit PWC use by season or time of day was considered but not analyzed further. However, it could make a viable alternative because it would “minimize conflicts with other users in congested areas,” which could be an important purpose for this action.

*NPS Response:* Time of day restrictions already exist because North Carolina PWC regulations prohibit the use of PWC from sunset to sunrise and have been adopted by the NPS. Limiting PWC use by season was not considered viable since few defensible reasons were identified to exclude PWCs at one time of year or another. The most obvious reason to limit access by season, for protection of birds and endangered species from access by PWCs, other boats, vehicles and pedestrians, is already managed by general closures. Monitoring of bird nesting areas and implementation of closures is routinely accomplished by the park resource management staff.

17. One commenter stated that the following three sections in the EA, “Unavoidable Adverse Impacts,” “Loss in Long-term Availability or Productivity to Achieve Short-Term Gain,” and “Irreversible or Irretrievable Commitments of Resources,” pose some serious difficulties for the environmental impact analysis as a whole.

*NPS Response:* Additional language has been added on the errata to the EA

for the “Unavoidable Adverse Impacts” section to address the no-action alternative. The section “Loss in Long-term Availability or Productivity to Achieve Short-Term Gain” has been removed as per the errata because this section is required in Environmental Impact Statements, but is optional in EAs.

The section “Irreversible or Irretrievable Commitments of Resources” discusses the minor use of fossil fuels to power PWC being an irretrievable commitment of this resource. Considering the very small number of PWC operators that use Cape Lookout National Seashore each year, which is estimated as less than one percent of visitors, the implementation of alternative B would not have more than a minor impact on irretrievable resources. Alternative B was identified as the environmentally preferred alternative because it meets the criteria established by the Council on Environmental Quality and the Department of the Interior (Department Manual) and also meets the purpose, needs, and objectives of this PWC EA.

18. Several commenters stated that alternative B does not merit status as the environmentally preferred alternative and should be rejected because it discriminates against PWC, unreasonably restricts PWC use, jeopardizes the safety of PWC users, motorized boaters and swimmers, and undermines the park’s regulatory objectives.

*NPS Response:* The EA was written to evaluate the appropriateness of PWC use within the National Seashore. The objective of the EA, as described in the “Purpose and Need” Chapter, was to evaluate a range of alternatives and strategies for the management of PWC use in order to ensure the protection of park resources and values, while offering recreational opportunities as provided in the enabling legislation, purpose, mission, and goals. An analysis of personal watercraft use and the impact topics was provided under each alternative. The EA was designed to determine if PWC use, not motorized boat use in general, was consistent with the park’s enabling legislation and management goals and objectives.

19. Several commenters are concerned that the preferred alternative may violate the Organic Act by allowing the use of personal watercraft within Cape Lookout, which they believe will impair park resources or result in the derogation of park resources and values.

*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 NPS Management Policies. An explanation of how the Park Service applied these laws and policies to analyze the effects of personal watercraft on Cape Lookout National Seashore resources and values can be found under "Impairment Analysis" in the "Methodology" section of the EA.

Impairment that is prohibited by the Organic Act and General Authorities Act is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values.

An impairment to a particular park resource or park value may be indicated when the impact reaches the magnitude of "major," as defined by its context, duration, and intensity. For each impact topic, the EA establishes thresholds or indicators of magnitude of impact. 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.

For the PWC regulations at Cape Lookout National Seashore the National Park Service has determined in the EA that the preferred alternative would not result in impairment of park resources or values.

20. Several commenters support alternative B.

*NPS Response:* Comment noted. NPS chose alternative B because it appears to meet the needs of most park visitors while continuing to protect the environment.

21. A commenter stated that the PWC use restrictions as stated in the proposed rule are vague, confusing, and defective from an enforcement standpoint. There is also redundancy in the description.

*NPS Response:* The description of alternative B states "PWC would be allowed to access these areas \* \* \* by remaining perpendicular to shore and operating at flat wake speed." This means that any other type of use would continue to be prohibited. All PWC use is prohibited in the National Park System by general regulation except as authorized by park specific special regulation. Language in the rule, errata to the EA, and the FONSI has been rewritten to clarify the type of PWC use authorized and locations within the national seashore where it is permitted.

22. One commenter stated that management options such as flat wake

zones, set backs, time and date restrictions were considered in the national rule and were determined to be too expensive to enforce and inadequate to protect park system resources.

*NPS Response:* After analysis as part of the NEPA process, Cape Lookout National Seashore is proposing to implement flat wake restrictions for better protection of park resources and visitor safety. The flat wake restrictions should not be difficult to enforce at Cape Lookout because the restriction will apply to PWC in all locations within the park.

23. One commenter stated that Alternative B undermines NPS's safety objective and endangers PWC users and other park visitors, bans PWC use in some park locations without justification, and severely limits use within the designated use areas, and that the EA overstates the potential impact of PWC use on park resources.

*NPS Response:* The EA analyzed a variety of impact topics to determine if personal watercraft use was consistent with the park's enabling legislation and management goals and objectives. As a result of this analysis, it was determined that the management prescriptions under alternative B, Reinstate PWC Use with Additional Management Prescriptions, would best protect natural and cultural resources, mitigate PWC safety concerns, provide for visitor health and safety, and enhance overall visitor experience. The plan was designed to determine if PWC use, not motorboat use in general, was consistent with the park's enabling legislation and management goals and objectives.

24. Many commenters support the no-action alternative. These commenters state that the EA provides no basis for overturning the Park Service's 2001 determination to ban PWC operation at Cape Lookout and that the preferred alternative breaks Federal law and fails to address many of the problems associated with PWC operation identified in the 2001 determination. Finally, these commenters believe the EA overlooks important research, reaches conclusions without supporting documentation or scientific evidence, and appears to violate the terms of the court-ordered settlement agreement with Bluewater Network.

*NPS Response:* A summary of the NPS rulemaking and associated personal watercraft litigation is provided in Chapter 1, Purpose of and Need for Action, Background. NPS believes it has complied with the court order and has assessed the potential impacts of personal watercraft on those resources identified in the settlement agreement, as well as other resources that could be

affected. This analysis was done for every applicable impact topic with the best available data, as required by regulations (40 CFR 1502.22). Where data was lacking, best professional judgment prevailed using assumptions and extrapolations from scientific literature, other park units where personal watercraft are used, and personal observations of park staff. NPS believes that the EA is in full compliance with the court-ordered settlement and that the rationale for limited use within the national seashore has been adequately analyzed and explained.

Due to the increased level of public comment and congressional interest, Cape Lookout reconsidered the issues and impact topics described in the 2001 Determination in more detail in the EA. The 2001 Determination can be viewed at: <http://www.nps.gov/calo/parkplan.htm>. The results of the in-depth analysis in the EA indicated that potential impacts under Alternative B range from negligible to moderate for all impact topics, and chose Alternative B as the preferred alternative.

25. Some commenters believe the no-action alternative discriminates against PWC operators.

*NPS Response:* The objective of the EA, as described in the "Purpose and Need" Chapter, was to evaluate a range of alternatives and strategies for the management of PWC use in order to ensure the protection of park resources and values, as provided in the enabling legislation, purpose, mission, and goals.

26. The North Carolina Department of Environment and Natural Resources, Division of Coastal Management (DCM) suggests that a monitoring program be implemented to evaluate whether the adverse environmental effects of implementing the proposed action are, as expected, insignificant.

*NPS Response:* The restrictions for Cape Lookout are only associated with the area that is within the park boundary. The only water area within the boundary is on the sound side where the boundary is 150 feet from low water. It would be difficult to differentiate any impacts that were due to PWC use outside the park boundary (150-foot zone) compared to use that is inside the park boundary (150-foot zone), since most of the aquatic resources move freely in and out of these areas, except for direct impacts on submerged aquatic vegetation (SAV). In addition, SAV only occurs in one area that is proposed to be reopened to PWC use under alternative B. Marine mammals would also not be likely to use the area within 150-feet from shore because it is too shallow. It would be

difficult to differentiate impacts between PWC use and motorboat use because PWC use is very low compared to motorboat use, and motorboats use both areas inside and outside the 150-foot zone.

27. One commenter suggested reducing the number of access points to those already developed. Specifically, eliminate the following four access points from the regulation: Milepost 11B, Old Drum Inlet, New Drum Inlet, and Power Squadron Spit.

**NPS Response:** The access points at Milepost 11B, Old Drum Inlet, and New Drum Inlet were chosen because they provide access to the seashore for those people that live in the “down east” area from Davis to Cedar Island. Without including these access points, there would be few opportunities for PWC access from towns north of Davis. These sandy inlets are convenient areas to land a boat or PWC and allow easy access to the ocean. The use of these areas also provides protection to the remaining marshy areas of the sound, where submerged aquatic vegetation is more likely to occur.

Power Squadron Spit was included because it provides access to the southern-most portion of the park, which is a popular day-use area. This area near Lookout Bight consists of a protected sandy beach, and is heavily used by larger boats that utilize PWC or smaller inflatable boats to access the shore.

### Comments Regarding Water Quality

28. One commenter stated that, because the EA has not properly accounted for the pace at which the PWC manufacturers are converting to cleaner-running engine technologies that meet the EPA standards, the EA overstates the potential water quality impacts of resuming PWC use.

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

Reductions in emissions used in the water quality impact assessment are in accordance with the overall hydrocarbon emission reduction projections published by the EPA (1996). EPA (1996) estimates a 52% reduction by personal watercraft by 2010 and a 68% reduction by 2015. The 50% reduction in emissions by 2013 (the future date used in the EA) is a conservative interpolation of the emission reduction percentages and associated years (2010 and 2015) reported by the EPA (1996) but with a one-year delay in production line testing (EPA 1997).

Despite these conservative estimates, impacts to water quality from personal watercraft are judged to be negligible for all alternatives evaluated. Cumulative impacts from personal watercraft and other outboard motorboats also are expected to be negligible. If the assumptions used were less than conservative, the conclusions could not be considered protective of the environment, while still being within the range of expected use.

29. One commenter stated that the EA’s analysis is based on faulty premises that reflect worst case conditions.

**NPS Response:** The estimates of personal watercraft use and emissions are based on the best information available at the time of preparation of the EA and are meant to be conservative (i.e., protective of the environment). By using conservative input assumptions in estimating impact to water quality, the probability of underestimating impacts is minimized.

The evaporation rate for benzene (half-life of approximately 5 hours at 25 °C) is based on information presented in EPA (2001) and in Verschuren (1983). Because impacts to water quality were determined to be negligible before any discussion or application of this evaporation rate, it was not discussed in the impact assessments of the alternatives.

As stated in Appendix A of the EA, the concentration of benzo(a)pyrene can be up to 2.8 mg/kg (or 2.07 mg/L) (Gustafson *et al.* 1997). Because this concentration could be found in the gasoline used in Cape Lookout, it was used to be protective of the environment. It is not an unrealistic assumption. Annual sales of personal watercraft (200,000 units) are mentioned on page 7 of the EA. However, the text directs the reader to table 1 which shows that ownership declined after 1995. The discussion of national trends is not germane to the estimate of PWC use in the national seashore since the numbers of personal watercraft and

hours of use are based on observations by park staff (see page 102 of the EA).

In summary, if changes in evaporation rates, concentrations of gasoline constituents, sales of personal watercraft, and rates of replacement of older personal watercraft were made as suggested, the conclusions of negligible impacts from personal watercraft would not change, because “negligible” is the lowest impact level that can be used in the EA (see page 106). However, these conclusions would no longer be considered as conservative and could be challenged by other parties.

30. One commenter believes the EA ignores sales trends and relies on outdated statistics and assumptions, which inflate PWC sales and exaggerate PWC emissions.

**NPS Response:** Annual sales of personal watercraft (200,000 units) are mentioned on page 6 of the EA. However, the text directs the reader to table 1, which shows that ownership declined after 1995. The discussion of national trends is not germane to the estimate of PWC use in the national seashore since the numbers of personal watercraft and hours of use are based on observations by park staff (see page 102 of the EA) and not national trends.

If national sales of personal watercraft and rates of replacement of older personal watercraft were considered, the conclusions for impacts to water quality from personal watercraft would still be negligible.

31. One commenter stated that most PWC manufacturers have changed to 4-cycle engines, which do not mix oil with the gasoline.

**NPS Response:** The assumption of all PWC using 2-stroke engines in 2003 is recognized as conservative. It is protective of the environment and follows the emission data available in CARB (1998) and Bluewater Network (2001) at the time of preparation of the EA. Emission rates were assumed to be reduced by 8 percent in 2003 in accordance with the EPA’s estimate of hydrocarbon reduction (see page 104 of the EA). Despite these conservative estimates, impacts to water quality from PWC are judged to be negligible for all gasoline constituents, all areas, and all alternatives evaluated.

32. One commenter stated that there is some confusion on irreversible or irretrievable commitments of resources should the proposed action be implemented.

**NPS Response:** Agreed, there is confusion regarding the definitions of irreversible and irretrievable, but the confusion does not extend to the Cape Lookout EA. The National Environmental Policy Act (NEPA),

Section 102(2)(C)(v), does not distinguish between the two terms but instead lumps them together: "Any irreversible and irretrievable commitments \* \* \*" and many EAs and EISs also simply lump the two terms together. While the two terms in question are not defined in NEPA or in the National Park Service Director's Order #12 (DO-12), they are defined in the National Park Service Handbook that accompanies DO-12 as follows: "Irreversible impacts are those effects that cannot be changed over the long term or are permanent. An effect to a resource is irreversible if it (the resource) cannot be reclaimed, restored, or otherwise returned to its condition before the disturbance \* \* \* An irretrievable commitment of resources refers to the effects to resources that, once gone, cannot be replaced." It is important to not worry about the semantics of these terms and instead be thorough in the disclosure to the public of any long-term, permanent effects to the park resources.

The significance of personal watercraft using fossil fuel at Cape Lookout National Seashore (as it may affect air and water quality) has not been underestimated. In fact, the potential for impacts on these resources is quantitatively evaluated in the EA. The results indicate that PWC impacts to water quality and to air quality are negligible or nonexistent for all alternatives considered. These impacts could be termed inconsequential, especially in the context of other motorboats that outnumber personal watercraft 10 to 1 at the national seashore (see Table 15 of the EA).

33. One commenter stated that the water quality analysis does not fully account for the rapid rate that unburned gasoline emitted from PWC evaporates from the water.

**NPS Response:** Impacts to human health and the environment would be negligible for all gasoline constituents, all alternatives, and all areas. The term "negligible" is the lowest (least significant impact threshold) term available to describe impacts in the EA (see page 106). Because all impacts to water quality were judged to be negligible, the effect of evaporation was not discussed in detail in the results. However, the effect of evaporation/volatilization of gasoline constituents is discussed in two locations under "Methodology and Assumptions." These processes are mentioned in paragraphs 5 and 7 on page 103 of the EA. Volatilization of gasoline constituents (BTEX, methyl tertiary-butyl ether (MTBE), and petroleum aromatic hydrocarbons (PAHs)) also is

discussed in Appendix A: Approach to Evaluating Surface Water Quality Impacts.

#### Comments Regarding Air Quality

34. One commenter stated that NPS does not sufficiently account for the rapid engine conversion that is occurring and improperly overlooks the emissions reductions that the PWC companies have already achieved.

**NPS Response:** A conservative approach was used in the analysis, since the numbers of PWCs already converted to four-stroke engines are not known. In addition, the EPA model takes into account the reduction in emissions over time. Even with the conservative approach, the analysis for alternative B presented in the EA indicates that current PWC use at Cape Lookout National Seashore results in negligible impacts to air quality.

35. One commenter stated that, while the EA correctly concludes that the short- and long-term human health impact from PWC emissions of hydrocarbons (HC) and nitrogen oxides (NO<sub>x</sub>) under alternatives A and B would be negligible, NPS nevertheless overstates actual emissions levels for these constituents.

**NPS Response:** It is agreed that the relative quantity of HC + NO<sub>x</sub> are a very small proportion of the county-based emissions and that this proportion will continue to be reduced over time. The EA takes this into consideration in the analysis.

For consistency and conformity in approach, NPS has elected to rely on the assumptions in the 1996 Spark Ignition Engine Rule which is consistent with the widely used NONROAD emissions estimation model. The outcome is that estimated emissions from combusted fuel may be more conservative, compared to actual emissions.

36. One commenter stated that the EA's use of a study by Kado *et al.* is outdated, and the EA inaccurately uses the results of this study.

**NPS Response:** The criteria for analysis of impacts from PWC to human health are based on the National Ambient Air Quality Standards (NAAQSS) for criteria pollutants, as established by the EPA under the Clean Air Act, and on criteria pollutant annual emission levels. This methodology was selected to assess air quality impacts for all NPS EAs to promote regional and national consistency, and identify areas of potential ambient standard exceedances. PAHs are not assessed specifically as they are not a criteria pollutant. However, they are indirectly included as a subset of total hydrocarbons, which are assessed

because they are the focus of the EPA's emissions standards directed at manufacturers of spark ignition marine gasoline engines. Neither peak exposure levels nor National Institute for Occupational Safety and Health (NIOSH) nor Occupational Safety and Health Administration (OSHA) standards are included as criteria for analyzing air quality related impacts except where short-term exposure is included in a NAAQS.

The Kado Study presented the outboard engine air quality portion of a larger study described in Outboard Engine and Personal Watercraft Emissions to Air and Water: A Laboratory Study (CARB 2001). In the CARB report, results from both outboards and personal watercraft (2-stroke and 4-stroke) were reported. The general pattern of emissions to air and water shown in CARB (2001) was 2-stroke carbureted outboards and personal watercraft having the highest emissions, and 4-stroke outboard and personal watercraft having the lowest emissions. The only substantive exception to this pattern was in NO<sub>x</sub> emissions to air- 2-stroke carbureted outboards and personal watercraft had the lowest NO<sub>x</sub> emissions, while the 4-stroke outboard had the highest emissions. Therefore, the pattern of emissions for outboards is generally applicable to personal watercraft and applicable to outboards directly under the cumulative impacts evaluations.

37. One commenter stated that a proper PAH analysis, using the analytical approach set forth in the Lake Mead Report, refutes unsubstantiated claims by PWC opponents that PAH emissions from PWC operating in the Cape Lookout National Seashore will endanger human health.

**NPS Response:** The EPA data incorporated into the 1996 Spark Ignition Marine Engine rule were used as the basis for the assessment of air quality, and not the Sierra Research data. It is agreed that these data show a greater rate of emissions reductions than the assumptions in the 1996 Rule and in the EPA NONROAD Model, which was used to estimate emissions.

However, the level of detail included in the Sierra Research report has not been carried into the EA for reasons of consistency and conformance with the model predictions. Most states use the EPA NONROAD Model for estimating emissions from a broad array of mobile sources. To provide consistency with state programs and with the methods of analysis used for other similar NPS assessments, NPS has elected not to base its analysis on focused research

such as the Sierra Report for assessing PWC impacts.

It is agreed that the relative quantity of HC + NO<sub>x</sub> are a very small proportion of the county-based emissions and that this proportion will continue to be reduced over time. The EA takes this into consideration in the analysis. For consistency and conformity in approach, the NPS has elected to rely on the assumptions in the 1996 Spark Ignition Marine Engine Rule, which are consistent with the widely used NONROAD emissions estimation model. The outcome is that estimated emissions from combusted fuel may be more conservative, compared to actual emissions.

38. One commenter believes that the Sierra Research emissions analysis should be used in the air quality analysis.

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

It is agreed that the relative quantity of HC plus NO<sub>x</sub> are a very small proportion of the county-based emissions and that this proportion will continue to be reduced over time. The EA takes this into consideration in the analysis. For consistency and conformity in approach, NPS has elected to rely on the assumptions in the 1996 Spark Ignition Marine Engine Rule, which are consistent with the widely used NONROAD emissions estimation model. The outcome is that estimated emissions from combusted fuel may be more conservative compared to actual emissions.

#### Comments Regarding Soundscapes

39. One commenter stated that in the 2005 EA, NPS concludes that PWC operation would produce negligible to minor short-term impacts upon the park's soundscape. NPS provides no

new evidence for the EA's latest noise conclusions, which directly contradicts the 2001 determination.

*NPS Response:* In the 2005 EA impacts to the soundscape in the preferred alternative were evaluated using operational restrictions such as requiring PWC to travel at a flat wake speed and limiting access to specific locations. With these restrictions impacts were determined to be adverse, short term, negligible to minor, depending upon location. The 2001 determination was made using unrestricted conditions that were in effect prior to the 2002 prohibition.

40. One commenter stated that there is no evidence that PWC noise adversely affects aquatic fauna or animals. PWC typically exhaust above the water at the air/water transition area. Consequently, most PWC sound is transmitted through the air and not the water.

*NPS Response:* PWC exhaust is below or at the air/water transition areas, not above the water. Sound transmitted through the water is not expected to have greater than negligible adverse impacts on fish, and the EA does not state that PWC noise adversely affects aquatic fauna.

41. One commenter questioned the PWC noise levels that were used in the analysis.

*NPS Response:* A correction has been included in the errata to the EA to indicate that one PWC would emit 68 to 76 A-weighted dB at 82 feet. Based on the PWC noise levels from the Glen Canyon study, two PWC would emit 66 to 77 dB at 82 feet, 65 to 75 dB at 100 feet, and 59 to 69 dB at 200 feet. The noise levels of two PWC traveling together would be less than the NPS noise limit of 82 dB at 82 feet for all alternatives. Ambient sound levels at Cape Lookout National Seashore vary due to the wide range of land cover types and visitor and other activities within and near the national seashore. In addition to intensity, other aspects of PWC noise were assessed, including changes in pitch. The operation of PWC 50 feet from shore traveling at a flat wake speed would have minor adverse affects on the soundscape. In most locations, except in high use areas, natural sounds would prevail and motorized noise would be very infrequent or absent.

42. One commenter stated that the steps North Carolina has taken to limit boating noise will mitigate the potential impacts of PWC use on the park's soundscapes.

*NPS Response:* Comment noted. Impacts to soundscapes under alternative B are negligible to minor, depending on location.

43. Several comments stated that the EA's findings overstate the potential sound impacts of PWC use and do not include any documented complaint data about PWC noise.

*NPS Response:* Comment noted. Impacts to soundscapes under alternative B are negligible to minor, depending on location. The EA states that the level of sound impact associated with PWC use varies based on location, time of day, and season. The EA also states that sound impacts associated with PWC use would be most prevalent in quieter areas. Analysis of potential impacts of PWC use relating to sound was based on best available data, input from park staff, and the results of analyses using that data.

44. One commenter stated that the EA exaggerates PWC's propensity to become airborne.

*NPS Response:* NPS agrees that many PWC do not leave the water when being operated. When required to operate at flat wake speed in Cape Lookout National Seashore it is highly unlikely that any PWC will leave the water. Impacts to soundscapes from PWC under alternative B range from negligible to minor, depending on the location within the park.

45. One commenter stated that the PWC manufacturers have made significant progress in reducing PWC noise through technological innovations.

*NPS Response:* NPS concurs that ongoing and future improvements in engine technology and design would likely further reduce noise emitted from PWC. Even without the improvements the EA found impacts to soundscapes under alternative B are negligible to minor, depending on the location within the park.

46. One commenter stated that state legislation entitled the "National Marine Manufacturers Association Model Noise Act" establishes muffler requirements and maximum noise levels for PWC and other motorized boats, so noise disturbances would be minimized.

*NPS Response:* NPS concurs that ongoing and future improvements in engine technology and design would likely further reduce noise emitted from PWC. However, based on location and time, ambient noise levels at the national seashore can range from negligible to moderate and improved technology resulting in a reduction of noise emitted from PWC would not significantly change impact thresholds.

#### Comments Regarding Shoreline and Submerged Aquatic Vegetation

47. A commenter stated that because PWC lack an exposed propeller, they

can't damage seagrasses in shallow waters. Furthermore, the natural forces at Cape Lookout have a greater impact on vegetation than PWC use.

**NPS Response:** PWC do not have an exposed propeller but they do use an engine that directs a substantial amount of water towards the bottom at a high velocity. PWC can operate in waters less than a foot deep and have the potential of disturbing the sediment and submerged aquatic vegetation in shallow water areas. Disturbance of submerged aquatic vegetation beds diminishes their ecological value and productivity, affecting the entire ecosystem. As PWC are frequently operated in shallow areas in a repetitive manner, impacts on submerged aquatic vegetation beds can be severe. Natural forces may at times have a greater impact but the NPS allows such to occur without interference.

48. A commenter stated that allowing PWC operators to access shallow areas near the Cape Lookout Environmental Education Center dock would greatly disturb the underwater substrate and shoreline.

**NPS Response:** The 10 designated access areas, which include the area near the Cape Lookout Environmental Education Center dock, were chosen to avoid marshes and high-congestion beach areas. Indirect impacts from PWC use to shoreline vegetation would occur but would be limited to the designated access areas and would therefore be negligible to minor. Most of the access areas do not contain submerged aquatic vegetation beds, so PWC operation in these areas would have little potential to adversely impact this habitat. Additionally, the flat-wake speed restriction would minimize the potential for PWC to damage submerged aquatic vegetation beds through collision or uprooting and would reduce sediment resuspension and its detrimental effects.

#### Comments Regarding Wildlife and Wildlife Habitat

49. One commenter stated that there are no documented cases of deliberate harassment or collisions with wildlife by PWC users and there is no evidence that PWC use disturbs wildlife along the shoreline.

**NPS Response:** There is a potential for collision with or disturbance of aquatic wildlife species. The determination of potential for impacts to wildlife associated with PWC use is based on the assessment of several potential stressors including potential collision; noise; disruption of feeding, nesting, and resting activities; sediment suspension; emissions, etc. The flat wake

requirement will reduce the level of PWC disturbance in the restricted areas and in nearby marshes. This reduced speed level and the requirement to travel perpendicular to the shoreline in designated access areas is expected to have short-term, negligible to minor, direct and indirect adverse impacts on aquatic wildlife species and habitat.

50. One commenter stated that the EA cites only anecdotal accounts, in which park staff supposedly observed PWC flushing terns and other bird species, as support for its position that PWC use is more disruptive to wildlife than other vessels.

**NPS Response:** The scope of the EA did not include the conduct of site-specific studies regarding potential effects of PWC use on wildlife species at Cape Lookout National Seashore. Analysis of potential impacts of PWC use on wildlife at the national seashore was based on best available data, input from park staff, and the results of analysis using that data. The EA does not state that shorebirds were observed being flushed from nests in the park.

51. A commenter believes that PWC are no more disruptive than other forms of boating activity. Studies by Dr. James Rodgers of the Florida Fish and Wildlife Conservation Commission have shown that PWC are no more likely to disturb wildlife than any other form of human interaction.

**NPS Response:** Some research indicates that PWC are no more apt to disturb wildlife than are small outboard motorboats; however, disturbance from both PWC and outboard motor boats does occur. Dr. Rodgers recommends that buffer zones be established for all watercraft, creating minimum distances between boats (personal watercraft and outboard motorboats) and nesting and foraging waterbirds. The shoreline restrictions limit access for PWC to 10 locations under alternative B and require them to operate at a flat wake speed as an added precaution. Impacts to wildlife and wildlife habitat under all the alternatives were judged to be negligible to minor from all visitor activities.

52. One commenter believes the Everglades Report has been wrongly used in the wildlife analysis.

**NPS Response:** The reference to the Everglades Report at page iii of the EA provides background regarding past actions taken by NPS with respect to PWC use. The EA states that "After studies in Everglades National Park showed that PWC use resulted in damage to vegetation, adversely impacted shorebirds, and disturbed the life cycles of other wildlife, NPS prohibited PWC use by a special

regulation at the park in 1994." This EA did not rely on the Everglades Report as a basis for assessing potential impacts to park resources associated with PWC use.

53. One commenter stated that the EA puts forth a conflicting position on the adequacy of new regulations to protect the park environment and wildlife, as well as the resources available to adequately enforce the NPS' new rules.

**NPS Response:** The NPS agrees that a total prohibition would be easier to enforce. However, enforcement would also be required under the no-action alternative. The seashore is fully aware that this new regulation will require short-term changes and reallocations of assets and resources, with an increase in education and enforcement. However, this effort will generally need to be focused at popular boating use areas that are already the focus of enforcement activity. Enforcement of the April 22, 2002, prohibition of PWC required an increased focus on education and PWC enforcement during routine patrols at a limited number of popular use areas. This education and enforcement effort became successful in about two boating seasons.

The majority of seashore users are law abiding and sensitive to the special values of seashore waters and lands. An active education program backed by a reasonable enforcement effort should, in a few seasons, educate the PWC user to the requirements of the new regulation. After an initial period of adjustment to the new regulations, the small number of PWC users who encounter seashore waters should be knowledgeable enough to abide by the law, and the initial need for focused attention on PWC operators will diminish. Additional water presence by park rangers and education are proven methods of protecting resources for the future enjoyment of all visitors, with the end result of enhancing the visitor experience.

54. One commenter stated that the EA reaches a different conclusion regarding the appropriateness of PWC, compared to the 2001 determination.

**NPS Response:** Due to an increased level of public comment, Cape Lookout reanalyzed the issues and impact topics described in the 2001 Determination in more detail in the EA. The 2001 Determination can be viewed at: <http://www.nps.gov/calo/parkplan.htm>. The results of the in-depth analysis in the EA indicated that alternative B, which provided for limited access at flat wake speeds, would create acceptable impacts that ranged from negligible to moderate for all impact topics. Alternative B was chosen as the preferred alternative.

55. One commenter stated that the preferred alternative violates the Marine Mammal Protection Act (MMPA), which requires Federal agencies to prevent the "take" of marine mammals. Slow moving boats, even ones operating at flat wake speed, can violate the MMPA prohibition on harassment.

*NPS Response:* The EA states that implementing the preferred alternative would be expected to have short-term, negligible to minor, direct and indirect impacts to aquatic wildlife and habitats. The EA states that flat wake zoning prescriptions and the implementation of ten designated access areas would minimize potential for adverse impacts.

56. One commenter stated that the EA fails to adequately investigate the impact of the current PWC ban on biological migration patterns.

*NPS Response:* The scope of the EA did not include the conduct of surveys to determine potential effects of the current PWC ban on biological use patterns in Cape Lookout National Seashore. Analysis of potential impacts of PWC use on wildlife at the national seashore was based on best available data, input from park staff, and the results of analysis using that data.

#### Comments Regarding Visitor Use and Experience

57. One commenter stated that the EA overlooks the impact of reauthorizing PWC operation and its impact upon visitor use patterns. NPS should have conducted a visitor use survey over the past two years to measure public support for the current PWC closures.

*NPS Response:* The comment is correct in stating that no new visitor use surveys have been conducted since 1993. However, NPS received over 6,000 letters and emails on the issue since the initial PWC closure in March 2001. To suggest the seashore is not current on the opinions of the public on PWC is not an accurate statement concerning the NEPA and rulemaking process.

58. One commenter stated that the national accident figures cited in the document are dated and potentially misleading.

*NPS Response:* The factors described in the comment are recognized. However, these factors are unlikely to fully explain the large difference in percentages (personal watercraft are only 7.5% of registered vessels, yet they are involved in 36% of reported accidents). In other words, PWC are 5 times more likely to have a reportable accident than are other boats. Despite these national boating accident statistics, impacts of PWC use and visitor conflicts are judged to be negligible relative to swimmers and

minor relative to other motorboats at the national seashore.

59. One commenter stated that the EA cites North Carolina state and county accident data instead of park-specific data. Furthermore, PWC users comprise only 1% of the total number of visitors to Cape Lookout National Seashore; therefore the number of PWC in the park will be relatively small and will not create unique or disproportionate safety risks.

*NPS Response:* Although only one PWC-related injury has been reported at Cape Lookout, much of the waters in the area are outside of park boundaries and many incidents are likely not reported to any agency. PWC speeds, wakes, and operations near other users can pose hazards and conflicts, especially to canoeists and sea kayakers. As stated in the EA, PWC have historically operated for longer periods of time in the heavily used areas of the park, including the soundside of Shackleford Banks and the cove at the Cape Lookout lighthouse, increasing the opportunities for conflicts or accidents. Limiting PWC use in these areas, coupled with flat wake speed requirements, would reduce conflicts between PWC and other users.

60. One commenter stated that by restricting PWC use to ten designated areas, alternative B concentrates PWC use in several popular areas of the park, which increases the likelihood of potential conflict with other visitors. Alternative B's restrictions do not apply to other motorized vessels. The PWC-only flat wake zone will create serious safety hazards for PWC users, and should be extended to all motorized craft within park waters.

*NPS Response:* The 10 designated access areas were chosen to avoid marshes and high-congestion beach areas. Implementation of a flat wake zone will reduce potential impacts associated with high speed use in near shore areas, as compared to use without the speed restriction. When vessels, other than PWC, enter park waters, which extend into the sound 150 feet, they normally operate at reduced speeds as they prepare to anchor or dock, so they are traveling at speeds similar to those required for PWCs. Vessels maneuvering in congested waters are generally safer at slower speeds.

61. Commenters are concerned with the assumption that PWC will not adversely impact public safety and that a majority of PWC users operate their craft in a lawful manner. However, in 2001 the NPS reported that PWC use "pose[d] unacceptable risks" to the safety of other visitors.

*NPS Response:* Due to an increased level of public comment, Cape Lookout

reanalyzed the issues and impact topics described in the 2001 Determination in more detail in the EA. The 2001 Determination can be viewed at: <http://www.nps.gov/calo/parkplan.htm>. The results of the in-depth analysis in the EA indicated that alternative B, which provided for limited access at flat wake speeds would create acceptable impacts that ranged from negligible to moderate for all impact topics. Alternative B was chosen as the preferred alternative. Alternative B also provides more enforcement and education for PWC users.

62. A commenter stated that documented visitor satisfaction when PWC use was permitted was rated very good to excellent. Furthermore, today's PWC owner typically uses the craft for family-oriented outings.

*NPS Response:* NPS agrees that some PWC operators are better educated and are not reckless with their machines, and that many trips are family-oriented. However, PWC use does vary, and many operators still use the machines for "thrill," including stunts, wake jumping, and other more risky exercises. Some users can still create disturbances or safety concerns, especially if children are operating the vessel. Under alternative B, NPS is providing access to the park so that PWC users can enjoy Cape Lookout National Seashore beaches and other natural or cultural resources, but is restricting the use of PWCs in park waters to prohibit the wave jumping and other similar behavior.

63. Several commenters stated that alternative B is inconsistent with NPS' goal of avoiding the creation of additional enforcement requirements, and that there are not enough enforcement officials to keep PWC violations in check.

*NPS Response:* Both the no-action alternative and alternative B requires enforcement action. Cape Lookout National Seashore is fully aware that this new regulation will require short-term changes and reallocations of assets and resources, with an increase in education and enforcement. However, this effort will need to focus on popular boating use areas that are already the focus of enforcement activity. Enforcement of the April 22, 2002, ban of PWC at Cape Lookout National Seashore required increased focus on education and PWC enforcement during routine patrols at a limited number of popular use areas. This education and enforcement effort was successful in two boating seasons.

The majority of national seashore users are law abiding and sensitive to the special values of seashore waters

and lands. An active education program backed by a reasonable enforcement effort should, in a few seasons, educate the PWC user to the requirements of the new regulation. After an initial period of adjustment to the new regulations, the small number of PWC users who encounter national seashore waters should be knowledgeable enough to abide by the law, and the initial need for focused attention on PWC operators will diminish. Additional water presence and education are proven methods of protecting resources for the future enjoyment of all visitors, with the end result of enhancing the visitor experience.

#### Comments Regarding Visitor Conflict and Safety

64. One commenter stated that the EA reaches many conclusions regarding the impact of PWC upon Cape Lookout resources and wildlife that are directly contradicted by the 2001 determination and previous NPS testimony.

*NPS Response:* Due to the increased level of public comment and congressional interest, Cape Lookout National Seashore reanalyzed the issues and impact topics described in the 2001 Determination in more detail in the EA. The 2001 Determination can be viewed at: <http://www.nps.gov/calo/parkplan.htm>. In the 2001 determination PWC use was evaluated without any operational or access restrictions and therefore the results differ in results. The results of the in-depth analysis in the EA indicated that impacts under alternative B range from negligible to moderate for all impact topics, and the NPS chose alternative B as the preferred alternative. Under alternative B, PWC would only be allowed in ten areas of the park in order to facilitate PWC access to certain sections of Shackleford Banks, South Core Banks, and North Core Banks. PWC must remain perpendicular to the shore and operate at flat wake speed, which would limit safety and noise issues from PWC.

65. Commenters have concerns about PWC operators following too closely and riding too close to the shoreline, both of which put people at risk for serious injury.

*NPS Response:* In the preferred alternative, PWC will only be allowed in the ten areas within the park specifically for landing purposes. PWC must remain perpendicular to shore and operate at flat wake speed. These restrictions would reduce the potential for conflicts with other vessels.

66. One commenter believes that the proposed rule caters to a minority of PWC users at the expense of the

majority of the park visitors who favor a PWC ban.

*NPS Response:* The proposed rule would support visitor enjoyment by allowing limited access by PWC users while accommodating other visitors and meeting resource management objectives.

#### Comments Regarding Cultural Resources

67. One commenter stated that the EA overstates PWC's potential impact on cultural resources.

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

#### Comments Regarding Socioeconomics

68. One commenter stated that the EA does not investigate the economic impact that lifting the PWC ban would have upon businesses that are dependent upon the conservation of wildlife and their habitat.

*NPS Response:* Page 170 of the EA states that the primary group that would incur costs under the preferred alternative is park visitors who do not use PWC and whose experiences would be negatively affected by PWC within the park. However, because PWC users account for a very small fraction of economic activity in the region, it is very unlikely that there will be any measurable incremental impacts on the region's economy. Continued PWC use within the park under the preferred alternative would have short-term, minor adverse impacts on wildlife species and their habitats, and is unlikely to impact the conservation of wildlife in and near the park.

69. One commenter stated that the proposed rule fails to mention the economic impacts on the PWC-related businesses in the area. The comment also mentions a recently published economic study that discusses the economic impact of banning PWC in Cape Lookout National Seashore.

*NPS Response:* NPS reviewed the Trade Partnership study, which concludes that PWC sales grew steadily through 1995, and have declined dramatically since then. The study blames this decline in sales on the PWC bans at National Parks. While the PWC ban at some National Park units may have contributed slightly to decline in PWC sales, NPS disagrees with the study's conclusion that the ban is the primary reason for the decline in sales.

PWC use occurred in only 32 of the 87 park units that allow motorized boating. These 32 park units comprise a very small percentage of the total amount of waterways in the United States that can accommodate PWC. A decline in PWC sales can be attributed to many other reasons, including economic reasons, perceptions about the machines, and limitations by other public entities. In fact, at least 34 states have either implemented use restrictions or considered regulating PWC use and operation.

The economic analysis report quoted in the comment (*Economic Analysis of Management Alternatives for Personal Watercraft in Cape Lookout National Seashore*, MACTEC Engineering 2005) concludes that the proposed rule is not expected to reduce any of the local area's PWC-related businesses' profit margins or reduce the competitiveness of PWC rental and retail businesses. The report also concludes that small increases in revenue are projected under the proposed rule, relative to the no-action alternative, for firms selling and renting PWCs to Cape Lookout visitors.

#### Changes to the Final Rule

Several non-substantive changes have been made to the rule language in response to comments on the NPRM. First, the rule was rewritten to clarify the type of PWC use prohibited and locations within the national seashore where it is permitted. In addition, the phrase "recreational use" has been deleted. Also, the text in the rule has been clarified to state that the restrictions will be imposed on the PWC operator, not the PWC equipment. Organization of the rule has also been improved. See the discussion above under Comment Numbers 14 and 21.

#### 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 NPS has completed the report "Economic Analysis of Management Alternatives for Personal Watercraft in Cape Lookout National Seashore" (MACTEC Engineering, December 2005). This document may be viewed on the

park's Web site at: <http://www.nps.gov/calo/parkplan.htm>.

(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 not 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 NPS published general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use. The implementation of the requirement of the general regulation continues to generate interest and discussion from the public concerning the overall effect of authorizing PWC use and NPS policy and park management.

#### Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on a report entitled "Economic Analysis of Management Alternatives for Personal Watercraft in Cape Lookout National Seashore" (MACTEC Engineering, December 2005). This document may be viewed on the park's Web site at: <http://www.nps.gov/calo/parkplan.htm>.

#### 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 final 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

The NPS analyzed this rule in accordance with the criteria of the National Environmental Policy Act and prepared an EA. The EA was available for public review and comment from January 24, 2005, to February 24, 2005. A Finding of No Significant Impact (FONSI) was signed on July 7, 2006. These documents are available at <http://www.nps.gov/calo/parkplan.htm> or may be requested by telephoning (252) 728-2250. Mail inquiries should be directed to park headquarters: Cape Lookout

National Seashore, 131 Charles Street, Harkers Island, NC 28531.

#### 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.

#### Administrative Procedure Act

This rule allows use of PWC in Cape Lookout National Seashore under specified conditions. Because current regulations do not allow use of PWC at all, this rule relieves a restriction on the public. For this reason, and because NPS wishes to allow the public to take advantage of the new rules as soon as possible, this final rule is effective upon publication in the **Federal Register**, as allowed by the Administrative Procedure Act at 5 U.S.C. 553(d)(1).

The proposed rule was published in the **Federal Register** (70 FR 77089) on December 29, 2005, with a 60-day period for notice and comment consistent with the requirements of 5 U.S.C. 553(b).

#### List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

- In consideration of the foregoing, the NPS amends 36 CFR part 7 as follows:

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

- 1. The authority 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 § 7.49 to read as follows:

#### § 7.49 Cape Lookout National Seashore.

(a) Personal watercraft (PWC) may be operated within Cape Lookout National Seashore only under the following conditions:

(1) PWC must be operated at flat-wake speed;

(2) PWC must travel perpendicular to shore;

(3) PWC may only be operated within the seashore to access the following sound side special use areas:

(i) North Core Banks:

Access	Location
(A) Ocracoke Inlet .....	Wallace Channel dock to the demarcation line in Ocracoke Inlet near Milepost 1.
(B) Milepost 11B .....	Existing sound-side dock at mile post 11B approximately 4 miles north of Long Point.
(C) Long Point .....	Ferry landing at the Long Point Cabin area.
(D) Old Drum Inlet .....	Sound-side beach near Milepost 19 (as designated by signs), approximately 1/2 mile north of Old Drum inlet (adjacent to the cross-over route) encompassing approximately 50 feet.

(ii) South Core Banks:

Access	Location
(A) New Drum Inlet .....	Sound-side beach near Milepost 23 (as designated by signs), approximately 1/4 mile long, beginning approximately 1/2 mile south of New Drum Inlet.
(B) Great Island Access .....	Carly Dock at Great Island Camp, near Milepost 30 (noted as Island South Core Banks-Great Island on map).

(iii) Cape Lookout:

Access	Location
(A) Lighthouse Area North .....	A zone 300 feet north of the NPS dock at the lighthouse ferry dock near Milepost 41.
(B) Lighthouse Area South .....	Sound-side beach 100 feet south of the "summer kitchen" to 200 feet north of the Cape Lookout Environmental Education Center Dock.
(C) Power Squadron Spit .....	Sound-side beach at Power Squadron Spit across from rock jetty to end of the spit.

(iv) Shackleford Banks:

Access	Location
(A) West End Access .....	Sound-side beach from Whale Creek west to Beaufort Inlet, except the area between the Wade Shores toilet facility and the passenger ferry dock.

(b) 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 25, 2006.

**David M. Verhey,**

*Acting Assistant Secretary, Fish and Wildlife and Parks.*

[FR Doc. 06-7502 Filed 9-7-06; 8:45 am]

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**DEPARTMENT OF LABOR**

**Office of Federal Contract Compliance Programs**

**41 CFR Part 60-2**

**RIN 1215-AB53**

**Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors; Equal Opportunity Survey**

**AGENCY:** Office of Federal Contract Compliance Programs, Labor.

**ACTION:** Final rule.

**SUMMARY:** The Office of Federal Contract Compliance Programs (OFCCP) is publishing a final rule rescinding the Equal Opportunity Survey (EO Survey) requirement in order to more effectively focus enforcement resources and eliminate a regulatory requirement that fails to provide value to either OFCCP enforcement or contractor compliance. This rule allows OFCCP to better direct its resources for the benefit of victims of discrimination, the government, contractors, and taxpayers.

**DATES:** *Effective Date:* September 8, 2006.

**FOR FURTHER INFORMATION CONTACT:** Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Room N3422, Washington, DC 20210. Telephone: (202) 693-0102 (voice) or (202) 693-1337 (TTY).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On January 20, 2006, OFCCP published a Notice of Proposed Rulemaking (NPRM), proposing to rescind a rule requiring designated nonconstruction contractors to prepare and file an EO Survey with OFCCP. 71

FR 3374. Created in 2000, the EO Survey was intended to further the goals of Executive Order 11246, as amended. The Executive Order requires that Federal Government contractors and subcontractors "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin." Section 202(1). Affirmative action under the Executive Order means more than passive nondiscrimination; it requires that contractors take affirmative steps to identify and eliminate impediments to equal employment opportunity. The affirmative steps include numerous recordkeeping obligations designed to assist the contractor, in the first instance, and also OFCCP in monitoring the contractor's employment practices.

The EO Survey contains information about personnel activities, compensation and tenure data, and certain information about the contractor's affirmative action program. OFCCP recordkeeping rules require contractors to maintain information necessary to complete the EO Survey, although not in the format called for by the survey instrument. See 65 FR 26100