authorized recipients identified in section 6103(p)(4).

With an increasing volume of authorized disclosures of returns and return information, it is critical that authorized recipients of returns and return information adhere to the strict safeguard requirements of the Code and that the IRS take all necessary steps to ensure that those requirements are met. If unauthorized disclosures do occur, it is similarly important that the IRS take steps to address them and ensure that they are not repeated. Such steps include, as appropriate, suspension or termination of further disclosures to an authorized recipient. Nevertheless, because the authority to receive returns and return information is provided by law, authorized disclosures should not be suspended or terminated for failure to maintain adequate safeguards without appropriate administrative review procedures. The temporary regulations set forth procedures to ensure that authorized recipients provide the proper security and protection to returns and return information.

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Procedure and Administration Regulations (26 CFR part 301) relating to section 6103(p)(4) and (p)(7). The temporary regulations provide the intermediate review and termination procedures for all authorized recipients.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the proposed regulations.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small businesses. These regulations do not impose burdens or obligations on any person, but instead provide certain rights of administrative review. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of these regulations is Melinda K. Fisher, Office of the Associate Chief Counsel (Procedure & Administration), Disclosure and Privacy Law Division.

### List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

## PART 301—PROCEDURE AND ADMINISTRATION

**Paragraph 1.** The authority citation for part 301 is amended, in part, by adding an entry in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 * * * Sections 301.6103(p)(4)–1 and 301.6103(p)(7)–1 also issued under 26 U.S.C. 6103(p)(4) and (7) and (q); * * *

**Par. 2.** Section 301.6103(p)(4)–1 is added to read as follows:

**§ 301.6103(p)(4)–1 Procedures relating to safeguards for returns or return information.**

[The text of proposed § 301.6103(p)(4)–1 is the same as the text of § 301.6103(p)(4)–1T published elsewhere in this issue of the **Federal Register**].

**Par. 3.** Section 301.6103(p)(7)–1 is added to read as follows:

**§ 301.6103(p)(7)–1 Procedures for administrative review of a determination that an authorized recipient has failed to safeguard tax returns or return information.**

[The text of proposed § 301.6103(p)(7)–1 is the same as the text of § 301.6103(p)(7)–1T published elsewhere in this issue of the **Federal Register**].

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 06–1714 Filed 2–23–06; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE INTERIOR

## National Park Service

## 36 CFR Part 7

**RIN 1024–AD42**

## Gateway National Recreation Area, Sandy Hook Unit, Personal Watercraft Use

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

**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service (NPS) is proposing to designate an area for the limited purpose of providing passage access for personal watercraft (PWC) through park waters in the Sandy Hook Unit of Gateway National Recreation Area (GATE), New York/New Jersey. This proposed rule implements the provisions of the NPS general regulations authorizing park areas to allow the use of PWC by promulgating a special regulation. The 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. The proposed rule designating areas where PWC may be used in the Jamaica Bay unit of GATE, New York/New Jersey is published in today's **Federal Register**.

**DATES:** Comments must be received by April 25, 2006.

**ADDRESSES:** You may submit comments, identified by the number RIN 1024–AD42, by any of the following methods:

—Federal rulemaking portal: *http://www.regulations.gov.* Follow the instructions for submitting electronic comments.

—E-mail NPS at *GATE_PWCComments@louisberger.com.* Use RIN 1024–AD42 in the subject line.

—Mail or hand deliver to: General Superintendent, Gateway National Recreation Area, 210 New York Avenue, Staten Island, NY 10306.

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

**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.*

**SUPPLEMENTARY INFORMATION:**

## Background

### *Additional Alternatives*

The information contained in this proposed rule supports implementation of the preferred alternative for the Sandy Hook Unit of GATE in the Environmental Assessment (EA) published April 3, 2003. The public should be aware that three other alternatives were presented in the EA, including a no-PWC alternative for each unit, and those alternatives should also be reviewed and considered when making comments on this proposed rule. The EA may be viewed at *http://nps.gov/gate/pwc/ea.pdf.*

### *Personal Watercraft Regulation*

On March 21, 2000, the National Park Service (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). 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 prohibited PWC use in all park units effective April 20, 2000, except for 21 parks, lakeshores, seashores, and recreation areas, until the park unit adopted a special regulation to manage PWC use. 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 continue.

### *Description of Gateway National Recreation Area and the Sandy Hook Unit*

Gateway National Recreation Area is located in the heart of the New York City metropolitan area. The park, which extends through three New York City boroughs and into New Jersey, consists of more than 26,000 acres and has been assembled from city parks, military sites, and undeveloped land. Congress established GATE in 1972 as one of the first urban parks in the national park system. Gateway National Recreation Area is composed of three distinct units—Jamaica Bay, Staten Island, and Sandy Hook. These units comprise a seashore ecosystem of wildlife, private communities, and outdoor recreational activities in an urban environment. This proposed rule addresses PWC use in the Sandy Hook Unit. The proposed rule designating areas where PWC may be used in the Jamaica Bay unit of GATE, New York/New Jersey is published elsewhere in today's **Federal Register**.

The Sandy Hook Unit is located on a largely undisturbed peninsula at the northern end of the New Jersey coast; this unit encompasses approximately 1,665 land acres, including 7.5 miles of ocean beaches and sheltered bayside coves and hundreds of acres of ecologically significant barrier beach vegetation. The area features ocean beaches, Sandy Hook Bay, salt marshes, historic Fort Hancock, and Sandy Hook lighthouse. At the north end of the unit is the Fort Hancock complex. Hiking trails lead to dunes, ponds, a maritime holly forest, and some of the richest bird habitat in New Jersey.

Gateway National Recreation Area is unique from other national park units in that it has few natural buffer zones and exists where impacts from human use are constantly changing the environment. The lands and waters of GATE represent the last remnants of the original shoreline and provide a coastal recreation resource that may in the near future serve more visitors than any other national park in the system. Visitation has been estimated to be about 8 million annually. In 2001, the Jamaica Bay and Staten Island Units in New York received more than 6 million visitors and the Sandy Hook Unit in New Jersey received over 1 million visitors. Because of its urban setting, proximity to two major airports, and intense visitor use, GATE is less likely than some park units to ever offer substantial opportunities for solitude or quiet contemplative experiences.

Gateway National Recreation Area has demonstrated the potential for ecological reclamation in an urban setting. Scientists have noted that the ecological restoration of Jamaica Bay and other GATE areas is proof that we can work within natural systems to reclaim what has been severely impacted.

### *Purpose of Gateway National Recreation Area*

Congress established GATE in October 27, 1972, as part of an effort to bring the national park system and its ethic of preserving and protecting outstanding resources closer to major urban areas: ''In order to preserve and protect for the use and enjoyment of present and future generations an area possessing outstanding natural and recreational features, the Gateway National Recreational Area * * * is hereby established.'' (16 U.S.C. 460(c)).

### *Significance of Gateway National Recreation Area*

Gateway National Recreation Area's primary significance is provided in its *Strategic Plan* as follows:

Gateway National Recreation Area encompasses the largest collection of natural ecosystems, wildlife habitats, historic resources, and recreational opportunities in the New Jersey/New York metropolitan areas.

Gateway National Recreation Area endeavors to incorporate the NPS conservation ethic into those values consistent with its highly urbanized setting and visitor use patterns.

Natural and cultural resources and associated values are protected, restored, and maintained in good condition and managed within their broader ecosystem and cultural context to the maximum extent possible.

Visitors safely enjoy and are satisfied with the availability, accessibility, diversity, and quality of park recreational opportunities.

### *Authority and Jurisdiction*

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

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

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, as with the United States Coast Guard, 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 Gateway National Recreation Area and the Sandy Hook Unit*

Water-based recreational activity at GATE, including wading, swimming, fishing, and boating, are the most popular activities in the park. This can be attributed to the fact that all three park units are located alongside some of the finest shoreline in the nation, which includes expansive bays, basins, creeks, marshes, and open water. The primary use of the open water resources in the Sandy Hook unit is from powerboats and secondarily by PWC owners. Motorized watercraft using the water resources typically range from 15 to 23 feet in length. Some yachts and fishing boats in the park are 50 to 100 feet in length. Personal watercraft represented 10% to 15% of the motorized watercraft within the recreation area before the April 22, 2002, prohibition. Other water activities include sailing, kayaking, canoeing, windsurfing, and kite-skiing. In the past, the majority of the PWC use occured in the Staten Island Unit, followed closely by the Jamaica Bay Unit. Personal watercraft use at Sandy Hook was limited.

Personal watercraft use within GATE has probably occurred since PWC were first introduced to the public. Personal watercraft use began in the 1980's and grew very rapidly. While the increase in PWC use has recently slowed down, use still continued to climb slowly prior to the prohibition. The rise may be attributed to design features which make it possible now for some PWC to carry more than two passengers and even as many as six. Personal watercraft use is most popular for approximately six months of the year.

Before the general regulation (36 CFR 3.24) on PWC use was effective on April 22, 2002, of the three GATE units, only the Sandy Hook Unit had actively managed and restricted PWC use within its boundaries. The restrictions were accomplished through the use of the Superintendent's Compendium. Since June 1990, all waters in Horseshoe Cove, north of a line which runs from the end of the sand spit 120′ ESE to the shoreline of Sandy Hook, all waters within Spermaceti Cove, and all waters east of a line from the south end of Skeleton Island to the north End of Plum Island have been closed to PWC use.

Personal watercraft use in the Sandy Hook Unit is limited due to restrictions that cover large portions of the unit and unfavorable ocean and bay conditions. Occasionally violation notices are issued to PWC users who enter restricted areas. According to NPS records, between 2000 and 2001, the Sandy Hook Unit had an annual average of 17,309 watercraft visits, or an average of 108 per day over a 160-day season. Of this daily average, 15% (16) were assumed to be PWC.

The heaviest PWC use season is between July and September, when launches take place south of the unit from private and public properties and marinas, also along the area between Sandy Hook and the mainland. The Atlantic Highlands Municipal Harbor is the largest marina in Sandy Hook Bay, and approximately 35% its use is from PWC users. The marina regulates marine operations by prohibiting water-skiing and wave jumping within 100 feet of another vessel.

Of particular concern is the impact to GATE's estuaries, which include open salt water, salt marshes, and fresh water, which empties into these bodies of water. Gateway National Recreation Area has over 3,000 acres of fresh and tidal wetlands. The wetlands provide the habitat for hundreds of birds, fish, mammals, reptiles, amphibians, shellfish, and other invertebrate species. Water based recreational activity competes for use of the shoreline with wildlife. Due to the delicate nature of these areas and other visitor experience issues the NPS is recommending that PWC use should be prohibited, except to provide passage through the park waters when traveling in the Shrewsbury River Channel.

**Resource Protection and Public Use Issues**

*Gateway National Recreation Area Environmental Assessment*

As a companion document to this NPRM, NPS has issued the *Personal Watercraft Use Environmental Assessment for Gateway National Recreation Area.* The EA was open for public review and comment from May 15 to June 15, 2003. Copies of the EA may be downloaded at *http://nps.gov/gate/pwc/ea.pdf.*

The purpose of the EA is to evaluate a range of alternatives and strategies for the management of PWC use at GATE to ensure the protection of park resources and values while offering recreational opportunities as provided for in the National Recreation Area's enabling legislation, purpose, mission, and goals. The assessment assumed alternatives would be implemented beginning in 2002 and considered a 10-year period, from 2002 to 2012. The assessment also compares each alternative to PWC use before April 22, 2002, when the prohibition took effect. In addition, the EA defines such terms as ''negligible'' and ''adverse.'' In this document, these terms are used to describe the environmental impact. Refer to the EA for complete definitions.

The EA evaluates four alternatives addressing the use of PWC at the three park units of GATE—Jamaica Bay, Staten Island, and Sandy Hook. Each unit is assessed separately. The following describes the four alternatives discussed in the EA for the Sandy Hook Unit:

Under alternative A, a special regulation would be promulgated to continue the current management and regulation of PWC, as provided for in the Superintendent's Compendium for the Sandy Hook Unit. Personal watercraft use would continue to be prohibited from all waters in Horseshoe Cove, Spermaceti Cove, the area between the south end of Skeleton Hill Island and the north end of Plum Island, and within 500 feet of swimming beaches or 300 feet of other beaches. This alternative is considered the ''baseline'' alternative to compare against other management strategies, including closure of the unit to PWC use. Operational restrictions at the unit would include those regulations mandated by New Jersey State boating regulations.

Under alternative B, PWC use would continue but would be limited to the navigational channels in the Sandy Hook Unit. Personal watercraft use would be prohibited in all NPS jurisdictional waters in Sandy Hook Bay except for the Shrewsbury River Channel and the Sandy Hook Channel. The oceanside of the unit would be closed to PWC use. All other operational restrictions at the unit, including the New Jersey State boating regulations, would continue to be enforced, as described under alternative A.

Under alternative C, PWC use would continue but only in the navigational channel connecting the Shrewsbury River (at the southernmost boundary of the unit) with the waters of Sandy Hook Bay west of the park boundary. Personal watercraft use would not be allowed in the Sandy Hook Channel, the False Hook Channel (which parallels the Atlantic coast beaches), or in any of the oceanside waters. As described under alternative A, all operational restrictions, including the New Jersey State boating regulations, would continue to be enforced within the Shrewsbury River Channel.

The final alternative is a no-action alternative. The no-action alternative

assumes a scenario of discontinuing all PWC use within this national park system unit. The NPS would take no further action to promulgate a special regulation to retain PWC use, which would result in a ban on PWC use within the unit, including the portions of the Shrewsbury River Channel and the Sandy Hook Channel within the unit.

A preferred alternative is selected for each unit that would best fulfill park responsibilities as trustee of the sensitive habitat; ensure safe, healthful, productive, and aesthetically and culturally pleasing surroundings; and attain a wider range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences. The following summarizes the preferred alternative at the Sandy Hook Unit.

Based on the environmental analysis prepared for PWC use at GATE, Sandy Hook Unit, alternative C is the preferred alternative. Alternative C allows limited and restricted PWC use under a special regulation solely for the purpose of access to waters outside of the park. This document proposes regulations to implement alternative C.

Under alternative C, PWC use would not be allowed within the park boundaries of the Sandy Hook Unit, except that PWC would only be allowed to transit the navigational channel connecting the Shrewsbury River (at the southernmost boundary of the unit) with the waters of Sandy Hook Bay west of the park boundary. Operational restrictions at the unit include those restrictions imposed by New Jersey State boating regulations.

As previously noted, NPS will consider the comments received on this proposal, as well as the comments received on the EA. In the final rule, the NPS will implement these alternatives as proposed, or choose a different alternative or combination of alternatives. Therefore, the public should review and consider the other alternatives contained in the EA when making comments on this proposed rule.

The following summarizes the predominant resource protection and public use issues associated with reinstating PWC use at the Sandy Hook Unit of GATE. Each of these issues is analyzed in the *Gateway National Recreation Area, Personal Watercraft Use Environmental Assessment.*

*Water Quality*

The proposed rule will manage PWC to prevent further degradation of water quality in estuarine and ocean waters, to manage PWC emissions that enter the water in accordance with anti-degradation policies and goals, and to protect plankton and other aquatic organisms from PWC emissions and sediment disturbances so that the viability of dependent species is conserved.

Most research on the effects of PWC on water quality focuses on the impacts of two-stroke engines, and it is assumed that any impacts caused by these engines also apply to the PWC powered by them. There is general agreement that two-stroke engines discharge a gas-oil mixture into the water. Fuel used in PWC engines contains many hydrocarbons, including benzene, toluene, ethylbenzene, and xylene (collectively referred to as BTEX) and polyaromatic hydrocarbons (PAHs). PAH also are released from boat engines, including those in PWC. These compounds are not found appreciably in the unburned fuel mixture, but rather are products of combustion. Discharges of these compounds—BTEX and PAH—have potential adverse effects on water quality.

A typical conventional (*i.e.*, carbureted) two-stroke PWC engine discharges as much as 30% of the unburned fuel mixture directly into the water. At common fuel consumption rates, an average two-hour ride on a PWC may discharge 3 gallons of fuel into the water. According to the California Air Resources Board, an average PWC can discharge between 1.2 and 3.3 gallons of fuel during one hour at full throttle. It is recognized that as time passes fewer of these types of PWCs are used and newer models sold have substantially reduced emissions. Hydrocarbon (HC) discharges to water are expected to decrease substantially over the next 10 years due to mandated improvements in engine technology.

Under this proposed rule only the portion of the Shrewsbury River Channel within the jurisdiction of the Sandy Hook Unit would be open to PWC use. This portion of the Shrewsbury River Channel consists of approximately 17 acres of surface water with an average depth of over 13 feet, which is slightly deeper than the 8-to 12-foot average depth of the unit's waters overall. This restriction would contribute to improved water quality by eliminating PWC pollutants and sediment suspension in shallow water areas of the unit. However, PWC use would be concentrated in a smaller area, resulting in more localized and intensified adverse effects of PWC pollutants before they are dispersed.

Since PWC use would be banned completely from the unit's oceanside waters (park boundary extends for quarter mile offshore), this proposed rule would have a beneficial impact on water quality and associated biota on this side of Sandy Hook. Impacts on water quality in the unit's bayside waters would be somewhat greater than under other options considered because PWC use would be concentrated within approximately 17 acres of surface water within the Shrewsbury River Channel. Currents in this navigational channel are swift, and tide- and wind-driven mixing would rapidly dilute PWC pollutants in this area. Impacts from PWC pollutants under ecotoxicological and human health benchmarks are expected to be negligible in 2002 and 2012. Cumulative impacts on aquatic organisms and human health from all motorized watercraft emissions would be negligible in all areas in 2002 and 2012. Therefore, this proposed rule would not impair water quality.

*Air Quality*

The proposed rule intends to manage PWC activity so that PWC air emissions of harmful compounds do not contribute to air quality degradation, and do not adversely affect visitor health and safety.

Personal watercraft emits various compounds that pollute the air. In the two-stroke engines commonly used in PWC, the lubricating oil is used once and is expelled as part of the exhaust; and 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). Personal watercraft also emits fuel components such as benzene that are known to cause adverse health effects. Even though PWC engine exhaust is usually routed below the waterline, a portion of the exhaust gases go into the air. These air pollutants may adversely impact park visitor and employee health, as well as sensitive park resources.

For example, in the presence of sunlight VOC and $NO_X$ emissions combine to form ozone. Ozone causes respiratory problems in humans, including cough, airway irritation, and chest pain during inhalations. Ozone is also toxic to sensitive species of vegetation. It causes visible foliar injury, decreases plant growth, and increases plant susceptibility to insects and disease. Carbon monoxide can affect humans as well. It interferes with the oxygen carrying capacity of blood, resulting in lack of oxygen to tissues. $NO_X$ and PM emissions associated with PWC use can also degrade visibility. $NO_X$ can also contribute to acid

deposition effects on plants, water, and soil. However, because emission estimates show that $NO_X$ from PWC are minimal (less than 5 tons per year), acid deposition effects attributable to PWC use are expected to be minimal.

Under this proposed rule, only Shrewsbury River Channel within the Sandy Hook Unit would be open to PWC use. Restricting PWC use to the Shrewsbury River Channel within NPS boundaries, with no PWC use in oceanside waters, would result in negligible adverse impacts from CO and PM emissions. Located in an ozone non-attainment area, there would be minor adverse impacts from $NO_X$, while impacts from VOC would be moderate in 2002, decreasing to minor by 2012. Overall, emissions from all boating activities would result in moderate adverse impacts from CO and negligible adverse impacts from PM. For ozone precursors in a non-attainment area, impacts from $NO_X$ would be moderate adverse and from VOC major adverse. Therefore, this proposed rule would not impair air quality resources.

Personal watercraft annual emissions would result in moderate adverse impacts for ozone exposure and negligible impacts for visibility. There are no perceptible visibility impacts or ozone injury on plants. Cumulative emissions from all PWC and other motorized boating activities would result in moderate adverse impacts related to ozone exposure and negligible impacts for visibility. Based on this analysis, this proposed rule would not impair air quality related values.

*Soundscapes*

The proposed rule would manage noise from PWC use in affected areas so that visitors' health and safety is not adversely affected and would improve conditions so visitor enjoyment will not be disturbed by PWC use.

The primary soundscape issue relative to PWC use is that other visitors may perceive the sound made by PWC as an intrusion or nuisance, thereby disrupting their experiences. This disruption is generally short term because PWC travel along the shore to outlying areas. However, as PWC use increases and concentrates at beach areas, related noise becomes more of an issue, particularly during certain times of the day.

The biggest difference between noise from PWC and that from motorboats is that the former continually leave the water, which magnifies noise in two ways. Without the muffling effect of water, the engine noise is typically 15 dBA louder and the smacking of the craft against the water surface results in a loud ''whoop'' or series of them. With the rapid maneuvering and frequent speed changes, the impeller has no constant ''throughput'' and no consistent load on the engine. Consequently, the engine speed rises and falls, resulting in a variable pitch. This constantly changing noise is often perceived as more disturbing than the constant noise from motorboats.

Personal watercraft users tend to operate close to shore, to operate in confined areas, and to travel in groups, making noise more noticeable to other recreationists. Motorboats traveling back and forth in one area at open throttle or spinning around in small inlets also generate complaints about noise levels; however, most motorboats tend to operate away from shore and to navigate in a straight line, thus being less noticeable to other recreationists.

Only the Shrewsbury River Channel in the Sandy Hook Unit would be open to PWC use under the proposed rule. Personal watercraft use that was allowed before April 22, 2002, on the oceanside and limited bayside areas of the unit would be eliminated. Other motorboat access to the unit's waters would not be affected. Personal watercraft-related noise impacts would be negligible over the short and long term and would mostly be caused by continued use outside unit boundaries. Ambient levels are higher on the bayside and would be slightly reduced from those previous to the ban as a result of prohibiting PWC within the park (up to a quarter mile off shore) except for use in the Shrewsbury River Channel. Due to the level of human activity and use restrictions, PWC use would result in negligible adverse impacts on other visitors and the natural soundscapes. Prohibiting PWC use on the oceanside of the unit would have a beneficial impact, reducing noise levels from PWC use.

Personal watercraft use restrictions would limit the areas of PWC use, with beneficial impacts on both the oceanside and bayside. Noise impacts would be negligible over the short and long term. Cumulative impacts of boating noise, ambient noise levels, and PWC noise would range from negligible to minor adverse, depending on location and time of year and compared to the natural soundscape. Therefore, the proposed rule would not impair any soundscape-related values.

*Wildlife and Wildlife Habitat*

This proposed rule intends to protect a part of the largest collection of natural ecosystems and wildlife habitats in the New York City metropolitan area, to protect birds and other wildlife from the effects of PWC-generated noise, especially during nesting seasons and other critical life stages, to protect fish and wildlife from the adverse effects that result from the bioaccumulation of contaminants, such as PAHs, emitted from PWC and to encourage increasing biodiversity of flora and fauna.

Some research suggests that PWC use affects wildlife by causing interruption of normal activities, alarm or flight, avoidance or degradation of habitat, and effects on reproductive success. This is thought to be a result of a combination of PWC speed, noise and ability to access sensitive areas, especially in shallow-water depths. Waterfowl and nesting birds are the most vulnerable to PWC. Fleeing a disturbance created by PWC may force birds to abandon eggs during crucial embryo development stages, prevent nest defense from predators, and contribute to stress and associated behavior changes. Impacts to sensitive species are documented under ''Threatened, Endangered, or Special Concern Species.''

Under the proposed rule, only the Shrewsbury River Channel would be open to PWC use in the Sandy Hook Unit. Prohibiting PWC use from all other areas within the unit would further minimize the potential for adverse impacts on wildlife, habitat, and aquatic fauna resulting in a beneficial impact. Negligible adverse impacts over the short and long term could result from disturbing waterfowl and other wildlife in open water near the Shrewsbury River Channel. Future increases in PWC use are likely around the Sandy Hook Unit, along with increases in other motorized watercraft use in and adjacent to the unit, with a greater potential for adverse effects to wildlife and habitat in the unit. The intensity of adverse impacts would be minor and indirect over the short and long term because species sensitive to noise and human activity are not expected to regularly occur in high-use areas or immediately adjacent habitats during peak periods. Therefore, limiting the area exposed to disturbance by PWC use would not impair wildlife, wildlife habitat, or aquatic fauna.

*Threatened, Endangered, or Special Concern Species*

This proposed rule aims to improve the status of GATE's four listed threatened and endangered and protected species and their habitats.

The same issues described for PWC use and general wildlife also pertain to special concern species. Potential impacts from PWC include inducing flight and alarm responses, disrupting normal behaviors and causing stress,

degrading habitat quality, and potentially affecting reproductive success. Special status species at the recreation area include Federal or State listed threatened, endangered, or candidate species.

The Endangered Species Act (16 U.S.C 1531 *et seq.*) mandates that all Federal agencies consider the potential effects of their actions on species listed as threatened or endangered. If the NPS determines that an action may adversely affect a federally listed species, consultation with the U.S. Fish and Wildlife Service is required to ensure that the action will not jeopardize the species' continued existence or result in the destruction or adverse modification of critical habitat.

Federally endangered wildlife species documented to occur in the Sandy Hook Unit include the Kemp's ridley sea turtle, leatherback sea turtle, northern right whale, humpback whale, and fin whale. Federally listed threatened wildlife species documented to occur in the area include the piping plover, loggerhead sea turtle, and northeastern beach tiger beetle.

Personal watercraft use would only be allowed in the Shrewsbury River Channel, which would minimize the potential for adverse impacts on special status species occurring in the unit. Impacts to species in nearshore and shoreline areas would be beneficial since most of these areas would be unaffected by PWC use. Closing all ocean beaches to PWC use within the unit would minimize the potential for disturbance of special status shorebirds nesting, foraging, or resting along the ocean beaches. Restricting PWC access from shallow water habitat would also enhance the quality habitat for sea turtles that may occur in the area. The proposed rule is not likely to adversely affect threatened, endangered, or special concern species that occur in the Sandy Hook Unit.

*Shoreline Vegetation*

This proposed regulation intends to regulate PWC use to reduce erosion in areas where shoreline vegetation is extremely sensitive and to manage PWC use to protect sensitive shoreline areas (vegetation/erosion) from PWC activity and access.

Under the proposed rule for the Sandy Hook Unit impacts to shoreline and tidal wetland vegetation and habitats would be beneficial because all shoreline and nearshore areas would be closed to PWC use. Cumulative impacts would be minor, direct and indirect, and adverse over the short and long term because of continued, limited access to shallow water areas by conventional motorized watercraft and continued foot traffic around landing areas. This proposed rule would not impair shoreline vegetation or wetland habitats.

*Visitor Experience*

In proposing this regulation, NPS aims to manage the potential conflicts between PWC use and park visitors and to help ensure that visitors safely enjoy and are satisfied with the quality of park recreational activities.

*Impacts on PWC Users*

Impacts would be both short and long term and minor to moderate as a consequence of closing most areas of the unit to PWC use. The Shrewsbury River Channel would remain open to PWC use. Other areas outside of NPS boundaries would remain available to PWC users.

*Impacts on Other Boaters*

Interactions between other boaters and PWC operators would continue on a limited basis within the Shrewsbury River Channel, but potential impacts on the non-PWC boater visitor experiences would be reduced because of the prohibition of PWCs in other use areas. Based on this analysis, the proposed rule would have negligible adverse impacts in the Shrewsbury River Channel and beneficial impacts elsewhere.

*Impacts on Other Visitors*

Other visitors would have limited contact with PWC operators. The effects on park visitors would be beneficial because PWC users would be prohibited from operating within park waters (except within the Shrewsbury River Channel) and prohibited from landing anywhere within the park.

Therefore, this proposed rule would have beneficial impacts on the experiences of visitors other than PWC users. There would be minor to moderate adverse impacts on PWC users as a consequence of closing most areas of the unit to PWC use other than the Shrewsbury River Channel. Cumulative impacts on all PWC users would be negligible to minor because areas outside the unit would remain open to PWC use. Impacts on other boaters, as well as other visitors onshore, would be beneficial within the unit and negligible adverse outside of the unit, with potential for increased congestion in the waterways outside the park. Most visitors would continue to be satisfied with their experiences at the Sandy Hook Unit.

*Visitor Conflict and Safety*

With this proposed rule, NPS intends to minimize or reduce the potential for PWC user accidents, to minimize or reduce the potential safety conflicts between PWC users and other water recreation users, to decrease visitor accident and incident rates, and to help ensure that visitors safely enjoy and are satisfied with the quality of park recreation activities.

Some research suggests that PWC use is viewed by some segments of the public as a nuisance due to the noise, speed, and overall environmental effects, while others believe that PWC use is no different from other watercraft, and recreational users have a ''right'' to enjoy this sport.

Closing most of Sandy Hook's waters to PWC use would have beneficial impacts on swimmers and other boaters. There would be a minor potential for accidents between PWC users and other boaters in the Shrewsbury River Channel. An increased potential for accidents between PWC users and other boaters could occur outside NPS waters. Some beneficial impacts would result from restrictions on PWC use and reduced potential for conflicts and accidents.

*The Proposed Rule*

As established by the April 2000 National Park Service rule, PWC use is prohibited in all NPS areas unless determined appropriate. The process used to identify appropriate PWC use at GATE considered the known and potential effects of PWC on park natural resources, traditional uses, and public health and safety.

National Park Service proposes to allow limited PWC use at GATE under a special regulation in § 7.29. Since NPS is proposing different special rules for each of the three units (Jamaica Bay, Staten Island, and Sandy Hook) within the GATE, three new paragraphs would be added to § 7.29.

Under this proposed rule, NPS proposes to allow PWC use in the Sandy Hook Unit only in the navigational channel connecting the Shrewsbury River (at the southernmost boundary of the unit) with the waters of Sandy Hook Bay west of the park boundary. Also this proposed rule would prohibit PWC users from launching or landing PWCs within the Sandy Hook Unit unit.

In addition to the limitations in the proposed special regulation, all State and Federal regulations regarding PWC use will be enforced by the NPS pursuant to 36 CFR 3.1. For the Sandy Hook Unit this would mean New Jersey law.

**Compliance With Other Laws**

*Regulatory Planning and Review (Executive Order 12866)*

This document is not a significant rule and has not been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This determination is based upon the Economic Impact Analysis (EIA) prepared for PWC use at all three units. The EIA may be viewed on the park's Web site at *http://nps.gov/gate/pwc/ea.pdf*. All preferred alternatives would best fulfill park responsibilities as trustee of the habitat; ensuring safe, healthful, productive, and aesthetically and culturally pleasing surroundings; and attaining a wide range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The EA has taken into consideration the following Federal, State and other agency plans and activities:

*Federal*

a. 1972 Coastal Zone Management Act.

b. 1982 Coastal Barriers Resources Act.

c. Gerritsen Creek Restoration Project (Army Corps of Engineers).

d. Jamaica Bay Ecosystem Restoration Project (National Park Service and Army Corps of Engineers).

e. Jamaica Bay Shoreline Protection Project (National Park Service and Army Corps of Engineers).

f. Jamaica Bay Ecological Research and Restoration Team (National Park Service and Army Corps of Engineers).

*State*

a. 2000 Non-Point Source Management Program (New York State).

b. New Jersey Coastal Management Plan.

c. New York Coastal Management Program.

d. New Jersey Watershed Management Area 12.

e. 1998 New York Clean Water Action Plan.

f. New Jersey Water Quality Standards.

g. 2000 New Jersey Water Quality Inventory Report.

h. New York Water Quality Standards, New York State.

*Implementation Plan*

a. New York and New Jersey State Boating Laws.

(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.

(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 Personal Watercraft Regulations in Gateway National Recreation Area'' (RTI, International, March 2002). This document may be viewed on the park's Web site at: *http://www.nps.gov/gate/pphtml/news.html.*

*Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and does not impose any other requirements on other agencies, governments, or the private sector.

*Takings (Executive Order 12630)*

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

*Federalism (Executive Order 13132)*

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

*Civil Justice Reform (Executive Order 12988)*

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

*Paperwork Reduction Act*

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

*National Environmental Policy Act*

As a companion document to this NPRM, NPS has issued the *Personal Watercraft Use Environmental Assessment for Gateway National Recreation Area.* The EA was open for public review and comment from May 15 to June 15, 2003. Copies of the EA may be downloaded from the Web at: *http://nps.gov/gate/pwc/ea.pdf.*

*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. In the EA, the *Sacred Sites/Native American Concerns* section states: This is not an issue at GATE because there are no known sacred sites or Native American concerns at GATE or, more specifically, within the vicinity of existing or potential future landing areas for PWC use areas.

*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 [§ 7.29 Gateway Recreation Area.] (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. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

*Drafting Information:* The primary authors of this regulation are: Barry T. Sullivan, General Superintendent, José Rosario, Chief, Operations Support, HQ, Liam Strain, Park Ranger, Operations Support, HQ, Gateway NRA; Sarah Bransom, Environmental Quality Division; and Jerry Case, Regulations Program Manager.

**Public Participation**

You may submit comments, identified by the number RIN 1024–AD42, by any of the following methods:

—Federal rulemaking portal: *http://www.regulations.gov* Follow the instructions for submitting electronic comments.

—E-mail at *GATE_PWCComments@louisberger.com* Use RIN 1024–AD42 in the subject line.

—Mail or hand deliver to: General Superintendent, Gateway National Recreation Area, 210 New York Avenue, Staten Island, NY 10306.

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.

In consideration of the foregoing, 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 for part 7 continues to read as follows:

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

2. Amend § 7.29 by adding paragraph (f) to read as follows:

**§ 7.29 Gateway National Recreation Area**

* * * * *

(f) *Personal watercraft (PWC): Sandy Hook Unit.*

(1) PWC use is allowed in the Sandy Hook Unit of Gateway National Recreation Area only in that portion of the Shrewsbury River Channel connecting the Shrewsbury River (at the southernmost boundary of the unit) with the waters of Sandy Hook Bay, west of the park boundary.

(2) Launching or landing PWCs within the Sandy Hook Unit is prohibited.

(3) 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: February 13, 2006.

**Paul Hoffman,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E6–2647 Filed 2–23–06; 8:45 am]

BILLING CODE 4312–52–P

---

## DEPARTMENT OF THE INTERIOR

## National Park Service

## 36 CFR Part 7

**RIN 1024–AD41**

## Gateway National Recreation Area, Jamaica Bay Unit, Personal Watercraft Use

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

**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service (NPS) is proposing to designate areas for the limited purpose of providing passage access through park waters for personal watercraft (PWC) use in the Jamaica Bay Unit of Gateway National Recreation Area (GATE), New York/New Jersey. This proposed rule implements the provisions of the 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. The proposed rule designating areas where PWC may be used in the Sandy Hook unit of GATE, New York/New Jersey is published elsewhere in today's **Federal Register**.

**DATES:** Comments must be received by April 25, 2006.

**ADDRESSES:** You may submit comments, identified by the number RIN 1024–AD41, by any of the following methods:

- Federal rulemaking portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail NPS at *GATE_PWCComments@louisberger.com.*
- Mail or hand deliver to: General Superintendent, Gateway National Recreation Area, 210 New York Avenue, Staten Island, NY 10306.

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

**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.*

**SUPPLEMENTARY INFORMATION:**

**Background**

*Additional Alternatives*

The information contained in this proposed rule for the Jamaica Bay Unit of GATE supports implementation of the preferred alternative from the Environmental Assessment (EA) published April 3, 2003. The public should be aware that three other alternatives were presented in the EA, including a no-PWC alternative, and those alternatives should also be reviewed and considered when making comments on this proposed rule.

*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). 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 prohibited PWC use in all park units effective April 20, 2000, except 21