

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 * * *"

As with the United States Coast Guard, NPS regulatory authority over waters subject to the jurisdiction of the United States, including navigable waters and areas within their ordinary reach, is based upon the Property and Commerce Clauses of the U. S. Constitution. In regards 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 clarified its authority to regulate activities within the park boundaries occurring on waters subject to the jurisdiction of the United States by adopting 36 CFR 1.2(a)(3).

Personal Watercraft Use in the National Seashore

PWC use at Assateague Island National Seashore is a relatively recent phenomenon, paralleling the national trend of increasing popularity and sales during the 1980s and 1990s. During that period, the preponderance of PWC use within the National Seashore occurred in the ocean and bay waters surrounding the northernmost 6 miles of Assateague Island. This area is immediately adjacent to the town of Ocean City which, with its summertime population of 300,000 and numerous marinas and boat launching facilities, generates significant amounts of water-based recreation, including boating and PWC use.

On April 20, 2000, the National Park Service adopted a final rule (36 CFR 3.24) for managing PWC use in areas of the National Park System. The regulation was implemented to ensure a prudent approach to PWC management that would potentially allow their use, yet protect park resources, sensitive natural areas, plants and wildlife, and reduce conflicts between park visitors. The final rule prohibited PWC use in all National Park System areas unless the NPS determined that this type of water-

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

Prior to 2000, PWC use was allowed throughout Assateague Island National Seashore, although as previously noted, the vast majority occurred adjacent to the northern end of the Island. In May 2000, most of the waters within the National Seashore were closed to PWC use consistent with 36 CFR 3.24 and a local determination by the superintendent that their continued use threatened the resources and values for which the park was established to protect. The authority for this closure was based upon 36 CFR Section 1.5, Closure and Public Use Limits. As established by the April 2000 National Park Service rule, PWC use is prohibited in all National Park System areas unless determined appropriate.

The process used to identify appropriate PWC use at Assateague Island National Seashore considered the known and potential effects of PWC on park natural resources, traditional uses, public health and safety. This rule is designed to manage PWC use within the National Seashore in a manner that achieves the legislated purposes for which the park was established while providing reasonable access to the park by PWC.

The Master Plan for Chincoteague National Wildlife Refuge (CNWR) (approved December 27, 1993) in the section entitled "Public Use Management—Access" states that "From September 1 through March 14, allow boating access to Fishing Point, Toms Cove and year round at Assateague Point Beach." The Master Plan does not distinguish between boats and PWC in regards to access in the Assateague Point area of the CNWR. The Assateague Point Beach is the only area of the entire southern end of Assateague Island that is open to boat-in access during the summer months. The Seashore has identified the adjacent waters as open to PWC use in paragraph (c)(ii) of this regulation. CNWR and the Seashore work cooperatively to assure that unit specific regulations are as compatible as can be, given the somewhat different missions of the two agencies. Prohibiting PWC use in this area would substantially deprive PWC operators of any beach access within reasonable operating range for PWC from the town of Chincoteague and would conflict with the Refuge's allowance of PWC access at CNWR. Additionally, this would have a negative impact on the tourism-based

economy the town of Chincoteague depends on.

The use of motor vessels is a traditional method of accessing Assateague Island for land-based recreational activities. As such, providing PWC owners with this opportunity is considered both desirable and compatible with park purposes. To identify areas of potential use, the effects of PWC were evaluated against a number of resource and public use issues. Only those areas with minimal, if any, potential for resource and visitor use impacts were selected. Under this rule, PWC use will be allowed only in the Ocean City Inlet and Horse Marsh areas primarily for the purpose of providing a transportation corridor to Assateague Island. Both areas have physical and biological characteristics that minimize the potential for adverse impacts to park resources and values, and both are located immediately adjacent to population centers and experience high levels of general boat traffic. The effect will be to provide island access for persons wanting to use PWC to travel to the National Seashore or for persons for whom a PWC is the only form of water access to Assateague Island.

Summary of Comments

The NPS published a proposed rule in the **Federal Register** on May 6, 2002 (67 FR 30339). The public was invited to comment on the rulemaking for 60 days. We received approximately 7,600 comments in the form of letters, faxes, emails and postcards on the rulemaking and supporting environmental assessment. Of the comments received, 7,264 support a complete ban on PWC use within the national seashore boundary. An additional 43 individuals support banning PWC use within the entire National Park System. Approximately 170 comments supported the proposed rule.

Comments that referred to the environmental assessment have been identified and responded to in the Finding of No Significant Impact. The following is a summary of the comments specific to the rulemaking and the responses by the NPS.

Comment 1: Personal Watercraft Industry Association (PWIA) would like to see a designated area along the ocean side of the island where PWC could come ashore, possibly south of where most beach-going visitors congregate.

Response: Ocean front use and beach access by personal watercraft was considered and rejected by the park. Concerns associated with such use/access included those related to visitor