

conflicts, safety, noise, and wildlife disturbance.

*Comment 2:* The park service can set aside a one or two mile stretch of beach, (the larger the stretch the more spread out the users will be, thereby enhancing safety), and designate it a PWC use area. This portion should be in the ORV zone where fishermen do not frequent.

*Response:* The Park Service is not considering access to the island by PWC via the ocean front for several reasons. Although ORV use does occur along the beach, use of PWC along that same stretch of ocean conflict with other uses in that area such as surf fishermen, sea kayakers, and surfers. These users are in that area in order to avoid conflicts with swimmers using beaches in other areas. Additionally, in order to launch from the ORV use area on the ocean front, it would be necessary to bring trailers out onto the beach and that is prohibited. Without launch capabilities, PWC would be forced to travel great distances along the coast in order to use that area, possibly causing a fuel shortage problem for the PWC. All of these issues and concerns lead the NPS to conclude that PWC use in the proposed area cannot be accommodated.

*Comment 3:* There are no enforcement powers established in the rule for personal watercraft violations. Until enforcement powers are established in the rule, the rule should not go into effect.

*Response:* In April of 2000, a service-wide rule became effective that defined a PWC and established the requirements for PWC use in the National Park System. That rule is located at Title 36 Code of Federal Regulations, Section 3.24. In April 2002, the authority for PWC to operate within Assateague Island National Seashore expired and PWC have been prohibited within the Seashore's boundaries pending the promulgation of this final rule. When this rule becomes effective, it establishes areas where PWC may operate within the boundaries of the Seashore and under what conditions. As codified, 36 CFR 3.24 establishes what areas of the Seashore are closed to PWC use and what craft meet the definition of a PWC. The regulations contained in 36 CFR 3.24 continue to apply to the areas where PWC use is prohibited within the Seashore and are enforceable by all commissioned rangers within the NPS.

*Comment 4:* The Town [of Chincoteague] feels that the distance from the shoreline in the Assateague Channel adjacent to Chincoteague should be decreased to as little as 25' to accommodate a rather narrow navigable area. To compress the area available to

personal watercraft only creates a safety hazard by overcrowding the area that would be available in this narrow waterway.

*Response:* The NPS is authorizing PWC use to occur in the water area along the western shore of Assateague Island near Horse Marsh. The use area will increase the total available area for PWC to operate within the bay and will not compress the navigable use area. This should help to alleviate any safety concerns related to PWC and other craft attempting to operate in the Assateague Channel, a narrow waterway.

*Comment 5:* The U.S. Coast Guard expressed concern if the PWC use area described in Sinepuxent Bay in Alternative A is prohibited in Alternative B then Alternative B leaves only the inlet area for use. That could send the wrong signal and push a lot of folks into a very tight area where the currents max out, large vessels transit and over the next couple of years there will be a large scale Army Corps of Engineers project.

*Response:* Following their initial comments, the U.S. Coast Guard met with park staff to discuss the proposed action. The U.S. Coast Guard Command then retracted their original statement.

The Coast Guard's initial concern was the ramification of a closed area in Sinepuxent Bay and how this would potentially increase traffic in Ocean City Inlet. The NPS reported that they had previously engaged the local PWC rental companies, discussed the proposed closure area and the impact this would have on their operation. The area in question is just west of Assateague and north of the 611 bridge. In alternative A, this area is indicated by the "PWC use area" markings. The PWC rental companies stated that this would not impact their operation, because the area in question is very shallow and would likely cause damage to their craft. Their renters are directed to stay in the deeper water to the west outside of the park boundaries. Therefore, the Coast Guard does not have a problem with the ban in that region, as it would negligibly impact inlet congestion.

*Comment 6:* Some provision for non-official emergency personnel rescue use should be allowed in Sinepuxent Bay, such as towing a drifting kayaker, windsurfer, swimmer, etc. There are no enforcement powers established in the rule for personal watercraft violations. Until enforcement powers are established in the rule, the rule should not go into effect. The EA does not take into account the considerable law enforcement burden caused by PWC users.

Water-based boundaries are difficult to define and enforce. A complete ban on PWC landings on Assateague Island National Seashore beaches and Chincoteague National Wildlife Refuge beaches and in these areas' respective waters would likely lead to less confusion and fewer enforcement actions. Once a community of PWC users understands that there is a complete prohibition on operating PWC in park and refuge waters, the demands on NPS enforcement personnel would be minimized.

*Response:* All mariners, regardless of type of vessel used, are obligated to render assistance to those in distress on the sea precluding the need for verbiage in the rule allowing such actions. The rule permits personal watercraft to beach on the ocean side of the island in case of injury or mechanical failure. The final rule will be enforceable pursuant to the authority provided in Title 36 Code of Federal Regulations, Sections 3.24 and 7.65. The limited amount of park water legally accessible by personal watercraft will make enforcement relatively easy.

*Comment 7:* The Town questions the right of the United States National Park Service or the United States Fish and Wildlife Service to regulate waters for which jurisdiction was granted to the Town by the Virginia General Assembly. The Town Charter as granted by the State gives jurisdictional authority over the surrounding waters of Chincoteague to the mean low water level of the Assateague shoreline.

*Response:* Congress in 16 U.S.C. 1a-2(h) has directed the NPS to regulate the waters within areas of the National Park System. The particular waters at issue are navigable waters which are clearly subject to the jurisdiction of the United States.

Public Law 89-195 September 21, 1965 authorized the establishment of Assateague Island National Seashore "together with the adjacent water areas not more than one-half mile beyond the mean high waterline." Sec. 4 of that law required the Secretary of the Interior to publish the location of the seashore in the **Federal Register**. This was published in FR Vol. 50 No. 159 August 16, 1985.

Together with the authority the Commonwealth of Virginia may have granted to the Town of Chincoteague, the National Park Service has the authority to regulate activities in the waters surrounding Assateague Island. However, under the Supremacy Clause of the U.S. Constitution, federal law and regulations may supercede state and local laws when necessary to protect the federal interest. In this rule, the NPS has