

## Section-By-Section Analysis

### Organizational Summary

The National Park Service (NPS) has prepared the following organizational summary to assist in the location and analysis of the proposed revisions.

#### NUMBERING

Old	New
3.1 Applicable Regulations .....	3.2 Deleted
3.2 NPS Distinctive Identification.	
3.4 Accidents .....	3.5
3.5 Inspections .....	3.4
3.6 Prohibited Operations .....	3.8
3.7 Noise Abatement .....	3.14
3.20 Water Skiing .....	3.11
3.21 Swimming and Bathing ....	3.15
3.22 Surfing .....	Deleted
3.23 SCUBA and Snorkeling ...	3.17
3.24 Regulation of Personal Watercraft.	3.9

#### New sections

3.1 Applicability and Scope
3.6 Operator Age for Power Vessels
3.7 Personal Floatation Devices (PFDs)
3.10 Operating Under the Influence
3.12 Marine Sanitation Devices
3.13 Sunken, Grounded, Disabled Vessels
3.16 Swim Beach Areas
3.18 Submersibles

### Section 1.4 What Terms Do I Need To Know?

In order to enhance clarity and consistency, ten definitions have been included in this section. One, defining vessel, is a revision of the current definition; it has been revised to more adequately describe the applicability of these regulations to all craft including tubes, rafts and other inflatable devices; surfboards, sailboards, and other rigid devices, specifically when these are used as a means of transportation. Nine others are added in order to reduce confusion in interpretation of regulations or to address issues new to part 3: dive flag, flat wake speed, harbor, manned submersible, power-driven vessel, sailing vessel, sewage, underwater diving, and un-manned submersible. The rationale for the addition of these terms appears in the preamble relative to the appropriate section.

### Section 3.1 What Is the Applicability and Scope of This Section?

This section is added to include a description of the applicability of part 3 to all park waters. Other laws applicable have been removed from this section and now appear in § 3.2.

The objective of the regulations in this part is to provide for the proper

management of boating and other water use activities within parks. Park waters are all waters that are subject to the jurisdiction of the NPS. This includes both navigable waters within the congressionally established boundaries of a park area and non-navigable waters where the United States owns or administers the lands and waters within the boundaries of a park area. Examples of park areas with navigable waters within the boundaries include Biscayne National Park, Assateague Island National Seashore, and Channel Islands National Park. Examples of park areas with non-navigable waters where the United States has jurisdiction over the lands and waters within the boundaries include Crater Lake National Park, Yellowstone National Park, and Glacier National Park or other areas with inland lakes and ponds.

Section 1.2 defines the primary applicability and scope of the NPS regulations found in 36 CFR parts 1 through 5, and parts 7 and 13. In § 1.2(a)(1) and (2) the NPS provides that the regulations in Chapter 1 apply, respectively, on lands and waters located within boundaries of park areas that are either federally owned or NPS-administered. While in § 1.2(a)(3) it states that the regulations shall apply to all waters subject to Federal jurisdiction that are located within National Park System boundaries.

In addition to the general regulatory authority delegated by Congress in 16 U.S.C. 3, the NPS has been authorized to “[p]romulgate regulations concerning boating and other activities on or relating to waters located within areas of the National Park System. This includes waters subject to the jurisdiction of the United States: provided, that any regulations adopted pursuant to this section shall be complementary to, and not in derogation of, the authority of the United States Coast Guard to regulate the use of waters subject to the jurisdiction of the United States [.]” 16 U.S.C. 1a–2(h). Under these authorities the NPS has managed and regulated activities occurring on and in the waters of the National Park System.

### Section 3.2 Do Other Boating Laws and Regulations Apply To Me When I Operate My Boat on Park Waters?

The current § 3.2 pertains to “National Park Service distinctive identification”. This is considered an unnecessary regulation since boat markings are addressed in NPS Director’s Order 9 and Reference Manual 9. This regulation is deleted.

The proposed § 3.2(a) identifies USCG laws and regulations adopted with the addition of Title 33 and title 46 United

States Code. Proposed paragraph (b) identifies applicable state laws and regulations adopted as non-conflicting boating safety laws and regulations, and it is not the intent of this section to include non-boating water-use laws and regulations including but not limited to swimming, bathing, beach management or SCUBA diving unless specifically adopted in a section of the part 3 regulations.

The intent of this section, a revision of the existing 3.1, is to clarify and emphasize that the NPS is seeking to apply existing federal and state law to its management of boating activities. Except in situations of specific need as identified and proposed in the part 3 revision, the NPS will enforce the laws and regulations of the United States Coast Guard and the state within whose exterior boundaries a park area or a portion thereof is located. The NPS is encouraging each park to develop an administrative file of all state laws and regulations the park intends to adopt under § 3.2(b).

This regulation continues to adopt USCG laws and regulations in order to promote uniformity of boating regulations throughout the National Park System. While the USCG’s jurisdiction and therefore the application of laws and regulations by the USCG is limited to navigable waters, the NPS jurisdiction is not similarly restricted to navigable waters. The NPS adoption of the laws and regulations of the USCG makes them part of the NPS regulations and are subject to the same applicability and scope provisions as other NPS promulgated regulations. As such, the NPS applies pertinent USCG laws and regulations to all waters within park areas, whether the waters are navigable or non-navigable.

As directed by Congress in 16 U.S.C. 1a–2(h), this regulation recognizes the USCG laws and regulations as the guiding federal standard for regulating boating activities. However, this regulation also provides the opportunity for individual park areas to enforce state laws and regulations or NPS regulations where there is a specific need for public safety reasons, or in order to protect wildlife and the other resources, values, and purposes of a park area.

### Section 3.3 Am I Required To Obtain a Permit To Operate a Vessel in a Park Area?

This section continues to allow the superintendent to manage boating use within park areas that may effect park resources or the visiting public by requiring a permit to operate a vessel in park waters. Recognizing the uniqueness of park areas, a