

safe recreational use and for effective enforcement.

Additionally, the prohibition of operating around a diver's marker needed enhancement and has been moved to paragraph (b)(1). This is a change that enhances the prohibition formerly found in paragraph (d)(2) that limits vessels "within 100 feet of a diver's marker" to a speed less than "5 mph". The recommended change prohibits "operating a power-driven or sailing vessel within 100 feet of a diver's marker." Excepted are "vessels in support of dive operations" which must "maintain a flat wake speed".

This paragraph responds to a safety issue long confused in the minds of both boat operators and underwater divers. Under the previous rules, a vessel was allowed to approach a dive flag when not in excess of 5 mph. At the same time, divers have been taught that a boat must avoid a dive flag. Many boating safety classes (USCG Auxiliary for example) also taught that a boat must avoid a dive flag. It is the intent of this regulation to establish a safety zone around underwater diving activities in order to reduce conflict and accidents between underwater divers and vessels. At the same time boats in support of diving activities are allowed to function as intended.

Paragraph (e) is renumbered as (b)(4). Deletes "vessel not propelled by hand" and adds "power-driven or sailing vessel" to the description of prohibited vessels. Amends "location" to "shoreline" designated as a swimming beach. Amends "in excess of 5 mph or creating a wake" to "flat wake speed".

This will clarify for the visiting public and for park staff the intent of the rule regulating vessel operation in proximity to designated swimming beaches. The prohibition under the former regulation restricted the operation of a vessel, other than a manually propelled vessel, to beyond 500 feet of a location designated as a swimming beach. There has been considerable confusion regarding how to measure the distance of 500 feet in relation to the designated swimming beach. The intent of this recommended change is to clearly define the point at which the 500 feet distance is to be measured with the result of more clearly and consistently defining the safety zone at designated swim beaches. It is expected that a resulting consistency in management, education, and enforcement actions will result and will enhance visitor safety.

Paragraph (f) is renumbered as (b)(5). Amends "a vessel propelled by machinery" to "power-driven vessel". Amends "transom" to "top edge of the transom". Adds "motor cover or other

unsafe positions" to the description of prohibited activity. Deletes the exemption for a vessel "being maneuvered for anchoring, mooring or casting off moorings". Amends "operating in excess of 5 mph" to "being operated above flat wake speed".

Changes recommended to this section include changing the term "flat wake speed" instead of "5 mph or creating a wake", and changing "a vessel propelled by machinery" to "power-driven vessel".

These are recommended in order to provide consistency in terminology throughout part 3. Also recommended herein is the deletion of the allowance for unsafe riding when a vessel "is being maneuvered for anchoring, mooring, or casting off moorings" since this is redundant. A vessel engaged in such maneuvers will be already in compliance since its speed will be at "flat wake speed" in order to complete the maneuver.

Paragraph (g) is renumbered as (a)(5) without change.

Paragraphs (h) and (i) are combined and renumbered as (a)(2). Deletes reference to "trailers" and to "a vessel propelled by machinery". This clarifies the condition under which vessels may be launched in a park by combining the former paragraphs 3.6(h) and (i). The superintendent must designate launch sites and if local circumstances require may establish further conditions. The original paragraphs were redundant and resulted in some confusion. The proposed changes reduce the potential for confusion and enhance education and enforcement capability.

Paragraph (j) is renumbered as (a)(3). Amends "vessel propelled by machinery" to "power-driven vessel". Deletes "directly" from "not directly accessible by road."

Use of the term "power-driven vessel" rather than "vessel propelled by machinery" provides consistency throughout part 3. It is the intent of this proposal that the meaning of the paragraph is not altered.

Paragraph (k) is renumbered as (a)(1). Adds hovercraft. Airboats were previously prohibited in this section and that prohibition continues. The addition of hovercraft to part 3 is a result of new technologies increasingly available to the boating public and since this surface effect craft has the ability to be used on and over a variety of surfaces, including water. The ability to navigate into areas not accessible to other vessels or vehicles would open, in many cases, sensitive habitat to degradation and is inconsistent with the NPS mission. Due to the unique operating characteristics of hovercraft,

the prohibition of hovercraft will also appear in part 2 of this chapter.

Paragraph (l) is renumbered as (a)(4). Amends "size, length or width restrictions" to "length, width, or horsepower restrictions". Adds the criteria used by the USCG to measure vessel length. This continues the authority of the superintendent to restrict the size of vessels using national park waters. It is herein proposed to add language to this paragraph that identifies horsepower restriction as one of those criteria that may be established by the superintendent utilizing §§ 1.5 and 1.7 of this chapter. The work group considered a proposal to establish these vessel size restrictions in part 3. However, it was clearly demonstrated that individual park needs vary considerably. The authority to establish size restrictions will remain with the park superintendent.

This rule proposes language that identifies the USCG standard for measuring vessels and it is the intent of this paragraph that this standard be used in all NPS areas.

Section 3.9 May I Operate a Personal Watercraft (PWC) in Park Waters?

This section has been renumbered from 3.24 to 3.9 and replaces 3.24 (a) and (b) with additions.

Over the past several years the NPS has been working to propose personal watercraft (PWC) use in some areas of the National Park System. As PWC rules are finalized there will be a need to regulate some types of their activity. It is the intent of this section to provide parks having authorized PWC use, rules to govern certain operations of PWC that are as consistent as possible with those of the states. Accordingly, the work group used the NASBLA model act as its guide. This act was developed by NASBLA in concert with the USCG and the Personal Watercraft Industry Association. The NPS agrees with these entities that PWC are sufficiently unique in their operation and safety issues that some specific regulations are necessary for these vessels.

Paragraph (a) of this section requires PWC use to be authorized with the promulgation of a special regulation. This requirement is carried over from 36 CFR 3.24(a) and (b). A PWC is defined under existing NPS regulations located at 36 CFR 1.4. Paragraphs (b)(1) through (b)(4) are designed to reduce conflicts between PWC operators and other vessels and improve safety. To adhere to the goal of consistency with the states, the NPS is proposing in paragraph (b)(5) that if a park area is within a state that regulates the operation of PWC, then the more restrictive state regulation applies