

new recreational activity, it has occurred in 32 of 87 park units that allow motorized boating.

The National Park Service first began to study PWC in Everglades National Park. The studies showed that PWC use over emergent vegetation, shallow grass flats, and mud flats commonly used by feeding shore birds damaged the vegetation, adversely impacted the shore birds, and disturbed the life cycles of other wildlife. Consequently, managers at Everglades National Park determined that PWC use was inconsistent with the resources, values, and purposes for which the park was established. In 1994, the National Park Service prohibited PWC at Everglades National Park by a special regulation 36 CFR 7.45(e)(8) (59 FR 58781, Nov. 15, 1994).

Other public entities have taken steps to limit, and even to ban, PWC use in certain waterways as national researchers study more about the effects of PWC use. At least 34 states have either implemented regulations or considered regulating the use and operation of PWC (63 FR 49314, Sept. 15, 1998). Several Federal agencies, including the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration, have managed PWC differently than other classes of motorized watercraft.

When the National Oceanic and Atmospheric Administration regulated the use of PWC in most national marine sanctuaries, it was sued by the PWC Industry Association (PWIA). As a result, the Court of Appeals for the District of Columbia declared such PWC-specific management to be valid. In *PWC Industry Association v. Department of Commerce*, 48 F.3d 540 (D.C. Cir. 1995), the court ruled that an agency can discriminate and manage one type of vessel (specifically, PWC) differently than other vessels if the agency explains its reasons for the differentiation.

In February 1997, the Tahoe Regional Planning Agency, the governing body charged with ensuring no derogation of Lake Tahoe's water quality, voted unanimously to ban all vessels using two-stroke, internal combustion engines, including PWC, because of their adverse effects on water quality. Lake Tahoe's ban began in 2000.

Historically, the National Park Service grouped PWC with all other vessels. Thus, people could use PWC within a park service unit when the unit allowed the use of other vessels. However, by 1998 the National Park Service had closed seven units to PWC and other motorized vessels use through the implementation of horsepower

restrictions and park-specific regulations such as those promulgated by Everglades National Park. At that time, the National Park Service was reevaluating its management of PWC use, based on its responsibilities under the Organic Act and increased concerns for public safety.

In May 1998, the Bluewater Network, a private, independent, non-profit organization, filed a petition urging the National Park Service to initiate a rulemaking process to prohibit PWC use throughout the national park system. In response to the petition the National Park Service proposed a specific PWC regulation premised on the notion that PWC differ from conventional watercraft in terms of design, use, safety record, controversy, visitor impacts, resource impacts, horsepower-to-vessel ratio, and thrust capacity (63 FR 49312, Sept. 15, 1998).

The National Park Service envisioned the servicewide regulation as an opportunity to evaluate impacts of PWC use before authorizing their use. The preamble to the servicewide regulation calls the regulation a "conservative approach to managing PWC use" that considered resource concerns, visitor conflicts, visitor enjoyment, and visitor safety. During a 60-day public comment period, the National Park Service received nearly 20,000 comments on the proposed regulation. As a result of public comments and further review, the National Park Service issued a final rule (36 CFR 3.24(a), 64 FR 15077, March 21, 2000) that prohibited PWC use in park units, unless authorized by a special regulation.

In the 2001 Management Policies, the NPS adopted its new servicewide policy for PWC. As stated in section 8.2.3.3, "PWC use is prohibited unless it has been identified as appropriate for a specific park." PWC use can only be authorized based on "an evaluation of the park's enabling legislation, resources and values, other visitor uses, and overall management objectives [that] confirms that PWC use is appropriate and consistent" with other NPS management goals and objectives.

#### *PWC Use at Glen Canyon National Recreation Area*

Motorboats and other watercraft such as houseboats, ski boats, fishing boats, and powerboats have been used in Glen Canyon National Recreation Area since its establishment in 1972. PWC use has emerged at the recreation area with the introduction of this type of vessel in the 1980s. Prior to 2000, PWC use was allowed throughout Glen Canyon National Recreation Area except in the waters designated closed in the

Superintendent's Compendium, which included portions of the Colorado, Dirty Devil, Escalante, and San Juan rivers. These closures were for the protection of environmental values and the avoidance of conflict between users.

Glen Canyon National Recreation Area is located within the states of Arizona and Utah. Both states enforce their laws on Lake Powell within their respective state jurisdictions. The National Park Service adopts (36 CFR 3.1) and enforces these state regulations together with the NPS boating regulations in part 3 of Title 36 of the Code of Federal Regulations. The United States Coast Guard Regulations are also adopted in 36 CFR part 3.

On January 17, 2003, the National Park Service published a notice of proposed rulemaking for the operation of PWC at Glen Canyon National Recreation Area (68 FR 2466). The proposed rule for PWC use was based on alternative B (the preferred alternative) in the Glen Canyon National Recreation Area Draft Environment Impact Statement (DEIS). The DEIS was made available for public review on September 13, 2002 (67 FR 58071). The DEIS analyzed three alternatives for addressing PWC use at Glen Canyon National Recreation Area. Two of the alternatives would permit PWC use with certain restrictions through the development of special regulations. Alternative A would reestablish the limits on PWC use that existed prior to 2002 under the Superintendent's Compendium. Alternative B would impose additional restrictions on PWC use beyond what was proposed by alternative A. Alternative C would leave intact the existing 36 CFR 3.24 prohibition on PWC use within the recreation area. The 60-day public comment period for the proposed rule ended March 18, 2003.

A Final Environmental Impact Statement (FEIS) was made available to the public on May 16, 2003 (68 FR 26645). Some changes were made in the FEIS in response to the over 30,000 public and agency comments received on the DEIS. These changes are discussed below under "Changes to the Final Rule." The FEIS includes a discussion of comments section that addresses all of the issues raised by commenters to the DEIS. A Record of Decision on the FEIS was signed by the National Park Service on June 27, 2003.

While Glen Canyon National Recreation Area was officially closed to PWC use on November 6, 2002, the closure was temporarily lifted for the summer season of May 10, 2003, through September 30, 2003 after an agreement between the Bluewater