

63979, the docket number is incorrect. The docket number is corrected to read (USCG–2004–19615) each place that it appears.

Dated: November 8, 2004.

David L. Nichols,

Commander, U.S. Coast Guard, Acting Chief, Office of Regulations, and Administrative Law.

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC93

Pictured Rocks National Lakeshore, Personal Watercraft Use

AGENCY: National Park Service, Interior.

ACTION: Proposed Rule.

SUMMARY: The National Park Service (NPS) is proposing to designate areas where personal watercraft (PWC) may be used in Pictured Rocks National Lakeshore, Michigan. This proposed rule implements the provisions of the NPS general regulations authorizing park areas to allow the use of PWC by promulgating a special regulation. The *NPS Management Policies 2001* require individual parks to determine whether PWC use is appropriate for a specific park area based on an evaluation of that area's enabling legislation, resources and values, other visitor uses, and overall management objectives.

DATES: Comments must be received by January 14, 2005.

ADDRESSES: Comments on the proposed rule should be mailed to N8391 Sand Point Road, P.O. Box 40 Munising, Michigan 49862–0040. Comments may also be sent by e-mail to PIRO@den.nps.gov. If you comment by e-mail, please include “PWC rule” in the subject line and your name and return address in the body of your Internet message.

For additional information see “Public Participation” under

SUPPLEMENTARY INFORMATION below.

FOR FURTHER INFORMATION CONTACT: Kym Hall, Special Assistant, National Park Service, 1849 C Street, NW., Room 3145, Washington, DC 20240. Phone: (202) 208–4206. E-mail: Kym_Hall@nps.gov.

SUPPLEMENTARY INFORMATION:

Background

Additional Alternatives

The information contained in this proposed rule supports implementation

of the modified preferred alternative for Pictured Rocks National Lakeshore in the Environmental Assessment (EA) published July, 2002, and the errata sheet published October, 2003. The errata sheet corrects factual information in the EA as well as provides the analysis of the modified preferred alternative. The public should be aware that two other alternatives including a no-PWC alternative were presented in the EA and one alternative was modified in the subsequent errata sheet. Those alternatives should also be reviewed and considered when making comments on this proposed rule.

Personal Watercraft Regulation

On March 21, 2000, the National Park Service published a regulation (36 CFR 3.24) on the management of personal watercraft (PWC) use within all units of the national park system (65 FR 15077). This regulation prohibits PWC use in all national park units unless the NPS determines that this type of water-based recreational activity is appropriate for the specific park unit based on the legislation establishing that park, the park's resources and values, other visitor uses of the area, and overall management objectives. The regulation prohibits PWC use in all park units effective April 20, 2000, except a limited exception was provided for 21 parks, lakeshores, seashores, and recreation areas. The regulation established a 2-year grace period following the final rule publication to give these 21 park units time to consider whether PWC use should be allowed. Accordingly, on April 22, 2002, Pictured Rocks National Lakeshore closed for PWC use.

Description of Pictured Rocks National Lakeshore

Pictured Rocks National Lakeshore is situated in the north-central section of Michigan's Upper Peninsula, along the southern shore of Lake Superior. The eastern half of the Upper Peninsula is bounded by Lakes Superior, Michigan, and Huron. There are a variety of other national parks in the upper Great Lakes, including Apostle Islands National Lakeshore and Isle Royal National Park on Lake Superior, and Sleeping Bear Dunes and Indiana Dunes National Lakeshores on Lake Michigan. Canadian provincial parks are also located on Lake Superior.

The national lakeshore stretches from Munising to Grand Marais, approximately 40 miles to the northeast. The shoreline consists of narrow sandy beaches, sandstone cliffs, and a perched sand dune system. The sandy shoreline

is susceptible to erosion from natural weather conditions.

Pictured Rocks National Lakeshore was authorized in 1966. The lakeshore is noted for its multicolored sandstone cliffs, beaches, sand dunes, waterfalls, inland lakes, wildlife, and forested shoreline. Attractions include a lighthouse and former Coast Guard life-saving stations, along with old farmsteads and orchards. The lakeshore is a year-round recreational destination where hiking, camping, hunting, nature study, and winter activities abound.

Purpose of Pictured Rocks National Lakeshore

As formulated during the Pictured Rocks general management planning process, the purpose of the national lakeshore includes the following:

Preserve a portion of the Great Lakes shoreline for its geographic, scientific, scenic, and historic features, and its associated ecological processes.

Provide opportunities for public benefit in recreation, education, enjoyment, and inspiration.

Protect the character and use of the shoreline zone while allowing economic utilization of the inland buffer zone's renewable resources.

Significance of Pictured Rocks National Lakeshore

As stated in the national lakeshore's Draft General Management Plan / Wilderness Study/Environmental Impact Statement, Pictured Rocks National Lakeshore is significant because:

Pictured Rocks National Lakeshore preserves and affords public access to a spectacular and diverse segment of the Lake Superior shoreline.

Unmatched in their scenic value, the 200-foot high Pictured Rocks cliffs rise perpendicularly from Lake Superior, creating a rock mosaic of form, color, and texture, which is enhanced by cascading waterfalls.

Grand Sable Dunes, perched atop 300-foot-high sand banks above Lake Superior, is one of two perched dune systems on the Great Lakes; within these dunes live unique plant communities resulting from geomorphic processes.

Twelve miles of unspoiled and undeveloped Lake Superior beach contrast with the Pictured Rocks cliffs and Grand Sable Dunes.

Bedrock geology and glacial landforms provide significant topographic relief marked by streams, inland lakes, and a diversity of associated vegetation.

The shoreline offers extraordinary and inspirational scenic vistas of Lake

Superior, which has the largest surface area of any fresh water lake on earth.

Pictured Rocks National Lakeshore offers a variety of affordable year-round recreational opportunities for appropriate public use.

Within a distinct area, the lakeshore contains a spectrum of cultural resources focused on the human use of Lake Superior and its shoreline.

Lying in a transition zone between boreal and eastern hardwood forest, the lakeshore's scientifically recognized assemblage of flora and fauna is representative of associations unique to the Lake Superior Basin.

Pictured Rocks is the only national park system area with a legislated buffer zone.

Authority and Jurisdiction

Under the National Park Service's Organic Act of 1916 (Organic Act) (16 U.S.C. 1 *et seq.*) Congress granted the NPS broad authority to regulate 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's 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 regard 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 published a final rule (61 FR 35136, July 5, 1996) amending 36 CFR 1.2(a)(3) to clarify its authority to regulate activities within the National Park System boundaries occurring on waters subject to the jurisdiction of the United States.

PWC Use at Pictured Rocks National Lakeshore

PWC use in Pictured Rocks National Lakeshore began around 1990. Before the ban, use was only allowed on Lake

Superior, and it was relatively low. Restrictions on inland lakes precluded PWC use on those lakes. Pictured Rocks National Lakeshore has jurisdiction on the surface water of Lake Superior extending 0.25 mile from the shoreline. This proposed rule would only apply to the waters under the lakeshore's jurisdiction. In addition, Michigan's Personal Watercraft Safety Act of 1998 (Public Act 116) stipulates regulations for PWC use. One of the regulations is that personal watercraft cannot operate within 200 feet of the shoreline unless traveling perpendicular to shoreline at no-wake speed.

Before the ban, PWC operation on Lake Superior was concentrated between Sand Point and Chapel Beach, along the Lake Superior shoreline. The eastern side of the park had little PWC use. Rivers and streams within Pictured Rocks National Lakeshore are not accessible to personal watercraft due to extremely small size, shallow depths, and rocky bottoms. On inland lakes within the Lakeshore boundaries, the size of powerboat engines is restricted to two- and four-stroke internal combustion engines of 50 hp or less, essentially eliminating PWC use.

Before the ban was imposed, most PWC users at the park were from within 100 miles of the lakeshore. Based on staff observations, some users come from other parts of Michigan, Wisconsin, and Minnesota, and perhaps Ohio and Illinois. There are many other areas for water-based recreation in this portion of the Upper Peninsula, including State parks, national forests, and other lakes with public access. Such areas include other portions of Lake Superior (excluding the shore of Grand Island), many lakes within the Escanaba River and Lake Superior State Forests, several lakes within the Hiawatha National Forest, Manistique Lake, South Manistique Lake, and Lake Michigan.

To document actual PWC use and to provide peak usage information, staff conducted a survey at the Sand Point launch July 4-8, 2001. During the five-day survey, small craft warnings prohibited personal watercraft on two days. PWC use for the remaining three days ranged from 8 to 13 personal watercraft each day. Thus, the peak number of personal watercraft that were operating before the ban in the lakeshore was 13 per day—6.6 from the Sand Point launch and 6.6 from the Munising boat ramp.

Before the ban, because personal watercraft were also launched from the Munising boat ramp on the west end of the lakeshore, the city was contacted to determine launch numbers. However, specific data were not available. Based

on discussions with lakeshore staff, the number of personal watercraft launched from Munising was assumed to be the same as the number launched from Sand Point. Based on the analysis of the survey and assumptions, 6.6 personal watercraft would be launched from the Munising boat ramp each day during July and August weekends. All of these personal watercraft would likely travel within the lakeshore's jurisdiction.

Grand Marais, on the east end of the lakeshore, also has boat launch facilities. According to city staff, very few personal watercraft are launched—perhaps 12 all summer, for an average of 1 personal watercraft every seven days. This analysis assumes that on average no personal watercraft would be launched from Grand Marais during July and August.

The low PWC numbers are primarily a result of the cold water temperature, cool ambient air temperature, changeable weather conditions, and heavy winds and wave action. The average PWC trip within Pictured Rocks National Lakeshore lasted between three and five hours, from mid morning to mid or late afternoon. State regulations restrict operations to the hours of 8 a.m. to one hour before sunset. Most PWC users cruised and sometimes raced along the shoreline, explored the rock cliffs up close, jumped the wakes of tour boats (which make 4-5 foot swells), and traveled to beach destinations and spent the day or afternoon on the beach. Fewer PWC users assembled in pontoons and did short trips or went to beach areas. A very small number may have done day trips between Munising and Grand Marais (40+ miles). Only a few users asked about PWC camping opportunities.

Before the ban, PWC users were distributed throughout the lakeshore. According to NPS staff, most personal watercraft were operated on the west end of the lakeshore. This is consistent with the launch locations and predicted launch numbers. Few PWC operators traveled the entire length of the lakeshore due to the long distance, rough waters, and potential for changing weather.

Generally, there is very little information specific to visitor concerns about PWC use. Visitor surveys were conducted for the winter of 1999-2000 and for the summer of 2000 (with questions specific to PWC use in the national lakeshore). A majority of the respondents to the survey supported or strongly supported restricting PWC use to designated areas. No PWC accidents have been observed or reported to NPS staff. Five incident reports have been documented, one for operating too close

to other motorcraft, two for operating too close to swimmers, and two for operating illegally on inland lakes. There are no observations or reports related to natural resource concerns.

Resource Protection and Public Use Issues

Pictured Rocks National Lakeshore Environmental Assessment

The environmental assessment was available for public review and comment for the period August 1 through November 15, 2004. An errata sheet was prepared to address the changes to alternative B, the preferred alternative. To request a copy of the document and the errata sheet contact Superintendent, Pictured Rocks National Lakeshore, N8391 Sand Point Road, P.O. box 40, Munising, MI 49862-0040. A copy of the Environmental Assessment and the errata sheet may also be found at <http://www.nps.gov/piro>.

The purpose of the environmental assessment was to evaluate a range of alternatives and strategies for the management of PWC use at Pictured Rocks to ensure the protection of park resources and values while offering recreational opportunities as provided for in the National Lakeshore's enabling legislation, purpose, mission, and goals. The assessment assumed alternatives would be implemented beginning in 2002 and considered a 10-year period, from 2002 to 2012. In addition, the environmental assessment defines such terms as "negligible" and "adverse." In this document, these terms are used to describe the environmental impact. Refer to the EA for complete definitions.

The environmental assessment evaluates three alternatives addressing the use of personal watercraft at Pictured Rocks National Lakeshore. The errata sheet modifies one of the alternatives, Alternative B. Each alternative is described below:

Alternative A—Under alternative A, PWC use would continue as was provided and managed within Pictured Rocks National Lakeshore before the ban. PWC use would be unrestricted on Lake Superior from the lakeshore's 0.25-mile jurisdictional boundary to the lakeshore's shoreline. Launch and retrieval of personal watercraft would be permitted only at the Sand Point boat ramp on Lake Superior. PWC users would be able to land anywhere along the shoreline. PWC users would continue to abide by Michigan's Personal Watercraft Safety Act of 1998 (Public Act 116) and related regulations.

Alternative B—Alternative B was modified by the errata dated October

2003. Under the modified alternative B, PWC use would be allowed to operate on the waters of Lake Superior within the boundaries of Pictured Rocks National Lakeshore from the western boundary of the lakeshore up to the east end of Miners Beach.

PWC use would be allowed under the following conditions: Personal watercraft may only be launched from a designated launch site at Sand Point, PWC users may beach their craft only on Miners Beach, and PWC users may not launch or operate in any other area of the lakeshore. The superintendent of the park may temporarily limit, restrict, or terminate access to areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives. PWC use would be restricted at specific locations during the permitted use of ethnographic resources. Boat patrols would be conducted in the vicinity of the ethnographic resource use in order to reduce the potential for PWC-related intrusion into the ceremonial activity. PWC users would continue to abide by Michigan's Personal Watercraft Safety Act of 1998 (Public Act 116) and related regulations, as identified in alternative A. This alternative would allow PWC use along the Lake Superior shoreline within the western end of the park, covering approximately 8 miles of shoreline. The numbers of personal watercraft would not be restricted.

No-Action Alternative—Under the no-action alternative, the National Park Service would take no action to reinstate the use of personal watercraft at Pictured Rocks National Lakeshore and no special rule would be promulgated to continue personal watercraft use. Under this alternative, NPS would continue to prohibit personal watercraft use at Pictured Rocks begun on April 22, 2002.

Alternative B is the park's preferred alternative because it would best fulfill the park responsibilities as trustee of the sensitive habitat; ensure safe, healthful, productive, and aesthetically and culturally pleasing surroundings; and attain a wider range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences.

As previously noted, NPS will consider the comments received on this proposal, as well as the comments previously received on the Environmental Assessment [as modified by the errata sheet]. In the final rule, the NPS will implement one of these alternatives as proposed, or choose a different alternative or combination of

alternatives. Therefore, the public should review and consider the other alternatives contained in the Environmental Assessment [as modified by the errata sheet] when making comments on this proposed rule.

The following summarizes the predominant resource protection and public use issues associated with reinstating PWC use at Pictured Rocks National Lakeshore. Each of these issues is analyzed in the *Pictured Rocks National Lakeshore, Personal Watercraft Use Environmental Assessment* as modified by the errata sheet.

Water Quality

Most research on the effects of personal watercraft on water quality focuses on the impacts of two-stroke engines, and it is assumed that any impacts caused by these engines also apply to the personal watercraft powered by them. There is general agreement that two-stroke engines discharge a gas-oil mixture into the water. Fuel used in PWC engines contains many hydrocarbons, including benzene, toluene, ethylbenzene, and xylene (collectively referred to as BTEX) and polycyclic aromatic hydrocarbons (PAH). PAH also are released from boat engines, including those in personal watercraft. These compounds are not found appreciably in the unburned fuel mixture, but rather are products of combustion. Discharges of these compounds—BTEX and PAH—have potential adverse effects on water quality. A common gasoline additive, methyl tertiary butyl ether (MTBE) is not used in Michigan.

A typical conventional (*i.e.*, carbureted) two-stroke PWC engine discharges as much as 30% of the unburned fuel mixture directly into the water. At common fuel consumption rates, an average two-hour ride on a personal watercraft may discharge 3 gallons of fuel into the water. According to the California Air Resources Board, an average personal watercraft can discharge between 1.2 and 3.3 gallons of fuel during one hour at full throttle. However, hydrocarbon (HC) discharges to water are expected to decrease substantially over the next 10 years due to mandated improvements in engine technology.

PWC use would continue within the lakeshore, with a shift in location due to restrictions east of Miners Beach. Overall numbers of personal watercraft would remain similar to the number before the ban, with maximum use projected to increase from 13 per day in 2002 to 16 per day in 2012. For example, the estimated use in 2002 if PWC were allowed would have been 52

PWC-hours per day in the designated use area. Daily peak operation times would increase in 2012 to 64 PWC-hours in the designated use area. Water quality impacts east of Miners Beach would be reduced compared to before the ban, since PWC use would not be allowed in this area.

PWC users would operate within the designated use area because of the closure of other areas to the east and proximity to the launch facility at Sand Point. The Sand Point area would have the highest use and highest pollutant loads. This location also tends to have shallower waters that extend for some distance offshore. Over the next 10 years PWC use in this area is projected to increase from 13 to 16 machines per day.

The calculated threshold volumes for pollutants emitted by personal watercraft and boats would range from 0 to 240 acre-feet for the ecological criteria. The 1-methyl naphthalene volume for Sand Point (240 acre-feet) would be less than 1% of the volume available. These pollutant concentrations are well below the water quality benchmarks and would likely not be detectable. Cumulative ecological impacts under this proposal would be negligible.

Threshold volumes for the human health criteria range from 0 to 10,800 acre-feet. Benzene emissions in the Sand Point area would have the highest concentrations and would require 45% of the total water volume available within the 0.25-mile jurisdictional boundary for dilution. Benzene levels would be below the human health criterion. Similar to before the ban, dilution with adjacent waters and volatilization would occur and therefore cumulative human health based impacts would be negligible to minor. If the State water quality standard for benzene was used in place of the EPA criterion, estimated human health impacts from benzene would be even lower.

Total PAH concentrations in the designated use area with boating activity would equal or exceed 0.1 µg/L in 2002 and 2012. Although the calculated levels are well below aquatic life benchmarks, the concentrations could have a minor to moderate adverse impact to aquatic life due to phototoxic effects.

Future (2012) pollutant loads would decrease, despite increased boating traffic, due to reductions in engine emissions. Impact levels for cumulative actions would be negligible to moderate, depending on the location and pollutant type. All effects would be short term and would occur during the times of heaviest use.

In conclusion, based on analyses for individual pollutants, this proposal would have negligible to minor adverse effects on water quality due to continued PWC use. No impacts would occur east of Miners Beach where PWC use would be restricted under this proposed rule. While all pollutant loads would be well below benchmarks and criteria, PAH concentrations in the Sand Point segment and the western Cliffs segment could have negligible to moderate adverse phototoxic effects on aquatic life.

Cumulative impacts from PWC and motorized boat use would range from negligible to moderate. No impacts would occur in the Beaver Basin segment. Total PAH concentrations could be a concern for aquatic life, due to potential phototoxicity. Benzene concentrations could be detectable, but are expected to remain below the human health criterion. By 2012 impacts would be reduced substantially through improved emission controls.

Air Quality

Personal watercraft emit various compounds that pollute the air. In the two-stroke engines commonly used in personal watercraft, the lubricating oil is used once and is expelled as part of the exhaust; and the combustion process results in emissions of air pollutants such as volatile organic compounds (VOC), nitrogen oxides (NO_x), particulate matter (PM), and carbon monoxide (CO). Personal watercraft also emit fuel components such as benzene that are known to cause adverse health effects. Even though PWC engine exhaust is usually routed below the waterline, a portion of the exhaust gases go into the air. These air pollutants may adversely impact park visitor and employee health, as well as sensitive park resources.

For example, in the presence of sunlight VOC and NO_x emissions combine to form ozone. Ozone causes respiratory problems in humans, including cough, airway irritation, and chest pain during inhalations. Ozone is also toxic to sensitive species of vegetation. It causes visible foliar injury, decreases plant growth, and increases plant susceptibility to insects and disease. Carbon monoxide can affect humans as well. It interferes with the oxygen carrying capacity of blood, resulting in lack of oxygen to tissues. NO_x and PM emissions associated with PWC use can also degrade visibility. NO_x can also contribute to acid deposition effects on plants, water, and soil. However, because emission estimates show that NO_x from personal watercraft are minimal (less than 5 tons

per year), acid deposition effects attributable to personal watercraft use are expected to be minimal.

Under this proposed rule the number of personal watercraft used daily in the lakeshore would follow similar trends as before the ban, ranging from 13 in 2002 to 16 in 2012. The impacts of continued PWC use within the lakeshore, but with restrictions east of Miners Beach, would be the negligible, since the emissions would all be less than 50 tons/year. All pollutant loads would be less than 20 tons/year, with negligible to moderate impact levels.

As stated above, the number of personal watercraft operating within Pictured Rocks National Lakeshore would be similar to the number before the ban, except that PWC use would be prohibited east of Miners Beach. Therefore, PWC-related activities would result in negligible adverse impacts for all pollutants and would range from negligible to moderate adverse for air quality impact levels.

Soundscapes

Daily PWC use levels would be similar to the number before the ban, with a slight change in the area of use. Under this proposal there would be an estimated 13 personal watercraft per day in the designated use area. No PWC use would be allowed east of Miners Beach.

In most cases, personal watercraft would be dispersed along 8 miles of the lakeshore so that operating craft would be infrequent at any given location. At the areas that have the highest visitor use, such as Sand Point, PWC noise would be diluted by the sounds from wind, waves, other visitors, and motorboats. In general, the use of personal watercraft would result in negligible adverse impacts where other users are concentrated, such as at overlooks and beaches. Within the designated PWC use area, PWC noise would be heard frequently but would not be overly disruptive to visitors because of the high degree of activity that occurs within the area. Thus, PWC noise would have a moderate adverse impact on the soundscapes in the area of designated use.

Backcountry users, particularly in the Beaver Basin segment and along the North Country National Scenic Trail, tend to be more sensitive to sound levels and PWC activity. The intolerance to PWC noise by backcountry users was documented in the summer 2000 visitor survey. Under this proposed rule personal watercraft would be prohibited east of Miners Beach. Backcountry users in this area might still hear infrequent PWC noise since personal watercraft could still

operate outside the 0.25-mile boundary. Thus, eliminating PWC use from the eastern portions of the lakeshore would have minor beneficial impacts to the soundscape because related noise would be less frequent and at a greater distance from shore.

Overall, this proposed rule would have a minor beneficial effect east of Miners Beach and a moderate adverse effect near Sand Point and Miners Beach on days when PWC use was relatively heavy. Negligible impacts would occur when use was occasional and distanced from other park users, for example, PWC users operating far from shore. Moderate adverse impacts would occur mainly where PWC use would conflict with other quieter uses, such as fishing, beach uses, or backcountry camping. In general, the impact to those seeking a quiet visitor experience would most likely be short-term and minor because PWC use would not be constant throughout the day and because the enjoyment of the typical visitor activities in the area would not be compromised. Overall, this proposal would result in a net minor beneficial to moderate adverse impact on the soundscape of Pictured Rocks National Lakeshore. All impacts would be temporary, since noise would usually be for limited times.

Therefore, noise from personal watercraft would continue to have short- and long-term, moderate adverse impacts in the area of designated use. Impact levels would be related to the number of personal watercraft operating, as well as the sensitivity of other visitors. Eliminating PWC use east of Miners Beach would have minor beneficial impacts.

Wildlife and Wildlife Habitat

Some research suggests that personal watercraft affect wildlife by interrupting normal activities. This is thought to be caused by PWC speed, noise, and access. Flight response is the most likely impact of PWC use; the most likely occurrence of PWC-induced flight would be on Lake Superior. Impacts to sensitive species at Pictured Rocks, such as loons, peregrine falcons, and piping plovers, are documented under "Threatened, Endangered, or Special Concern Species."

The number of PWC users in the lakeshore would be similar to the number before the ban, except use would be prohibited east of Miners Beach. Wildlife impacts under this proposal would be similar to those that existed before the ban on PWC use. Due to the low habitat productivity and lack of colonial wildlife along the lakeshore, as well as the low number of personal

watercraft in use, impacts to wildlife and wildlife habitat due to PWC activity would be negligible at most locations. Closing eastern portions of the lakeshore to PWC use would have negligible beneficial impacts. Over the next 10 years impacts would continue to be negligible since PWC numbers would not increase substantially. All wildlife impacts would be temporary.

Therefore, due to the 200' distance that PWC users are required to operate at flat wake speed in proximity to the shoreline, impacts on wildlife and wildlife habitat would be negligible at most locations. Prohibiting PWC use east of Miners Beach would have negligible beneficial impacts.

Threatened, Endangered, or Special Concern Species

The same issues described for PWC use and general wildlife also pertain to special concern species. Potential impacts from personal watercraft include inducing flight and alarm responses, disrupting normal behaviors and causing stress, degrading habitat quality, and potentially affecting reproductive success. Special status species at the recreation area include Federal or State listed threatened, endangered, or candidate species.

The Endangered Species Act (16 U.S.C 1531 *et seq.*) mandates that all Federal agencies consider the potential effects of their actions on species that are listed as threatened or endangered. If the National Park Service determines that an action may adversely affect a Federally listed species, consultation with the U.S. Fish and Wildlife Service is required to ensure that the action will not jeopardize the species' continued existence or result in the destruction or adverse modification of critical habitat. The animal species at Pictured Rocks National Lakeshore that have the potential to be affected by this proposed rule include the federally listed piping plover and the State listed peregrine falcon and common loon. Plant species include the federally listed pitcher's thistle and the State listed Lake Huron tansy.

This proposal would allow continued PWC use from the western park boundary to the east end of Miners Beach. PWC use would be prohibited east of Miners Beach. Potential effects would be similar to those that existed before the ban and would be limited to interactions with wildlife farther than 200 feet from shore or to personal watercraft landing on shore.

Piping Plover—PWC use would not be allowed within the Grand Sable segment, where potential habitat exists, and there would be no effect on the

piping plover. If plovers ever became established in the western end of the lakeshore, then mitigating actions could be required to minimize any adverse effect from PWC use.

Common Loon and Peregrine Falcon—Interactions between personal watercraft and loons or falcons would have the same impacts as before the ban and would not likely adversely affect peregrine falcons or loons. Interactions between personal watercraft and loons or falcons would have the same impacts as before the ban and would not likely adversely affect peregrine falcons or loons.

Pitcher's Thistle and Lake Huron Tansy—PWC use would not be allowed within the Grand Sable segment, where these plants are known to exist. Therefore, this proposal would affect the pitcher's thistle or the Lake Huron tansy. Restoration activities proposed for 2002 would have a beneficial effect on the thistle and the tansy.

Overall, PWC use would have no effect on the piping plover, the pitcher's thistle, or the Lake Huron tansy, and would not be likely to adversely affect the common loon or the peregrine falcon since interactions would be extremely limited.

Cumulative effects for PWC users and other visitors would be similar to before the ban on PWC use and would not likely adversely affect concerned species or their habitat. PWC use would have no effect in the eastern portions of the lakeshore.

Piping Plover—There has been no evidence of plover use in the national lakeshore since 1992. PWC use or motorized boating would not be allowed in areas where critical plover habitat has been designated in the eastern end of the lakeshore. No direct effect on the piping plover is anticipated. If plovers started using habitat within Pictured Rocks National Lakeshore, then PWC and visitor activity would have the potential for adverse effects, and mitigating measures would be taken.

Therefore, PWC use would have no cumulative effect on the piping plover, the pitcher's thistle, or the Lake Huron tansy and would not be likely to adversely affect the common loon or the peregrine falcon since interactions would be extremely limited.

Shoreline Vegetation

PWC are able to access areas that other types of watercraft may not, which may cause direct disturbance to vegetation. Indirect impact on shoreline vegetation may occur through trampling if operators disembark and engage in activities on shore. In addition, wakes created by personal watercraft may

affect shorelines through erosion by wave action. The proposed rule aims to limit these disturbances to the shoreline areas.

PWC use under the proposed rule would continue to be allowed in the designated use area but use would be prohibited east of Miners Beach. PWC impacts to shoreline vegetation would be similar to those before the ban, since the number of PWC users would be comparable, although use areas would be modified. Impacts to vegetation east of Miners Beach would be negligible and beneficial since users would no longer have access to shoreline areas. Continued PWC use in other areas would have negligible adverse impacts to sensitive shoreline vegetation over the short and long term, with no perceptible changes in plant community size, integrity, or continuity.

Therefore, PWC use would have negligible adverse impacts in the designated use area over the short and long term because there have been no perceptible changes to plant community size, integrity or continuity, and none are expected in the future (2012). PWC restrictions east of Miners Beach would result in negligible beneficial impacts to shoreline vegetation.

Visitor Experience

The proposed rule would provide park visitors with a high-quality experience and manage potential conflicts between PWC use and other park visitors. PWC use under this proposal would continue to be allowed in the designated use area and PWC use would be prohibited east of Miners Beach. Of the 13 to 16 personal watercraft operating in the lakeshore during peak use, these restrictions would affect an estimated five to six PWC operators by changing their location of use. Additionally, PWC operation would be restricted at certain locations during the permitted use of ethnographic resources.

Impact on PWC Users—By prohibiting PWC use east of Miners Beach, there would be no use at Twelvemile Beach. Additionally, more PWC riders would stay within the west end of the park, between Munising and Miners Beach. Most PWC users (estimated at 60%) would have little or no noticeable change in their location of operation. They could, however, notice more personal watercraft operating within the 8 miles of the shoreline open to PWC use. Voluntarily extending operations farther from shore would likely offset this increase in density. Under this proposal PWC users would be limited in their location of operation and could be affected by a slight increase in density

of use. As a result, visitors who use personal watercraft at Pictured Rocks National Lakeshore would experience moderate adverse impacts.

Impact on Frontcountry Visitors—Swimmers, hikers, and other visitors to the Sand Point, Miners Beach, and Miners Castle areas would have slightly more contact with PWC operators than before the ban because PWC use would only be allowed along this stretch of the lakeshore and would be prohibited east of Miners Beach. The increased amount of contact would not be noticeable in comparison to existing conditions since most activities occur in this stretch of the lakeshore. PWC activity near Sand Point, Miners Beach, and Miners Castle would have negligible adverse impacts on the experiences of swimmers, hikers, and other visitors because under State regulations personal watercraft must be operated at no-wake speed within 200 feet of the shore and may only travel perpendicular to the shore.

Visitors east of Miners Beach would no longer have contact with PWC users within the lakeshore's 0.25-mile jurisdiction. Visitors to Chapel Beach and Twelvemile Beach, in particular, tend to look for quieter experiences. Therefore, this proposal would have a negligible beneficial impact to visitors east of Miners Beach.

Impact on Backcountry Visitors—Backcountry visitors east of Miners Beach would have decreased contact with PWC users, resulting in a moderate beneficial impact to their experiences. PWC restrictions would particularly enhance the experiences of wilderness visitors in the Beaver Basin segment. Visitors along the North Country National Scenic Trail within the Sand Point segment and the western one mile of the Cliffs segment would continue to be occasionally affected by PWC use, with a moderate adverse impact.

Motorized boats and other visitors would continue to interact, with impacts the same as before the ban on PWC use. Cumulative impacts related to the use of personal watercraft, motorized boats, and other visitor activities would be negligible over the short and long term because there would be little noticeable change in the visitor experience for most visitors. Backcountry visitors east of Miners Beach would have moderate beneficial impacts because of decreased impacts from PWC use. Most visitors would continue to be satisfied with their experiences at Pictured Rocks National Lakeshore.

Therefore, PWC users would be limited in their location of operation within the national lakeshore and could notice a slight increase in the density of

use in the vicinity of Sand Point. As a result, they would experience moderate adverse impacts. Restricting PWC use east of Miners Beach would have negligible beneficial impacts on the experiences of most other visitors in the short and long term, and it would have long-term, moderate, beneficial impacts on those visitors desiring backcountry experiences with natural "quiet." The level of PWC use would remain relatively low at lakeshore locations. When related to other visitor activities, PWC use would not appreciably limit the critical characteristics of visitor experiences.

Visitor Conflict and Safety

The proposed rule would minimize or reduce the potential for PWC user accidents and improve safety between PWC users and other water recreationists. This proposed rule assumes that PWC operations would be similar to before the ban, except that PWC use would be discontinued east of Miners Beach. As a result, the watercraft that normally operate in the eastern portions of the national lakeshore would be relocated to the western portion of the lakeshore.

Personal Watercraft/Swimmer Conflicts—Impacts would be similar to before the PWC ban since the overall number of personal watercraft operating within the lakeshore would not change. PWC user/swimmer interactions would increase slightly in the Sand Point segment and the western one mile of the Cliffs segment because of a shift in PWC use from other locations. However, under State regulations PWC operators must travel at no-wake speed within 200 feet of the shore and only perpendicular to the shore. The change in location for PWC operation would not be noticeable to other visitors and would continue to result in minor adverse impacts. In the remaining lakeshore locations there would be little or no conflict between PWC users and swimmers. No conflicts would occur east of Miners Beach, resulting in a negligible beneficial impact to these visitors.

Overall, PWC use would continue to have negligible to minor adverse impacts on most swimmers at Pictured Rocks National Lakeshore. Beneficial impacts would occur east of Miners Beach. Impacts would be perceptible to a relatively small number of visitors at localized areas, primarily at Sand Point and Miners Beach.

Personal Watercraft/Other Boat Conflicts—Impacts would be similar to before the ban. Overall, PWC use would continue to have minor adverse impacts on other motorized boat users at Pictured Rocks National Lakeshore.

Impacts would be perceptible to a relatively small number of visitors at localized areas, primarily at the Sand Point launch.

Cumulative impacts would be similar to before the ban on PWC use. The natural separation of use between the various lakeshore visitors reduces the potential for conflicts. For this reason, the cumulative impact of the various user groups on visitor conflicts and safety would be negligible to minor over the short and long term. Beneficial impacts would occur east of Miners Beach. Impacts would be perceptible to a relatively small number of visitors at localized areas, primarily at the Sand Point beach.

Therefore, continued PWC use would have short- and long-term, minor, adverse impacts on visitor conflicts and safety, particularly in the Sand Point area, due to the number of visitors and boats present on high use days. Conflicts at other locations would remain negligible because use is lower and conflicts would be less likely to occur. Conflicts would be eliminated east of Miners Beach, resulting in negligible, beneficial impacts.

The Proposed Rule

Under the proposed rule in § 7.32 PWC use would be allowed to operate on the waters of Lake Superior within the boundaries of Pictured Rocks National Lakeshore from the western boundary of the lakeshore up to the east end of Miners Beach. This proposed rule would allow PWC use along the Lake Superior shoreline within the western end of the park, covering approximately 8 miles of shoreline. PWC use would be allowed under the following conditions:

Personal watercraft may only be launched from a designated launch site at Sand Point.

PWC users may beach their craft on Miners Beach, however no launching or retrieving of the craft may occur at Miners Beach.

PWC users may not launch or operate in any other area of the lakeshore.

The superintendent may temporarily limit, restrict, or terminate access to areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

PWC use would be restricted at specific locations during the permitted use of ethnographic resources. Boat patrols would be conducted in the vicinity of the ethnographic resource use in order to reduce the potential for PWC-related intrusion into the ceremonial activity.

PWC users must comply with the requirements of the Michigan Personal Watercraft Safety Act of 1998 (Public Act 116), including the requirement to operate at flat wake speed within 200' of the shoreline, and related regulations.

Compliance with Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The National Park Service has completed the report "Economic Analysis of Personal Watercraft Regulations in Pictured Rocks National Lakeshore" (RTI, International, November 2004).

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies or controls. This rule is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does raise novel legal or policy issues. This rule is one of the special regulations being issued for managing PWC use in National Park Units. The National Park Service published general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use. The implementation of the requirement of the general regulation continues to generate interest and discussion from the public concerning the overall effect of authorizing PWC use and National Park Service policy and park management.

Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5

U.S.C. 601 *et seq.*). This certification is based on a report entitled report "Economic Analysis of Personal Watercraft Regulations in Pictured Rocks National Lakeshore" (RTI, International, November 2004).

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Does not have an annual effect on the economy of \$100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and does not impose any other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule only affects use of NPS administered lands and waters. It has no outside effects on other areas by allowing PWC use in specific areas of the park.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more

parties and a submission under the Paperwork Reduction Act is not required. An OMB Form 83-I is not required.

National Environmental Policy Act

As a companion document to this NPRM, NPS has issued the *Personal Watercraft Use Environmental Assessment for Pictured Rocks National Lakeshore* and subsequent errata sheet. The environmental assessment was available for public review and comment for the period August 1 through November 15, 2004. To request a copy of the document and errata sheet contact Superintendent, Pictured Rocks National Lakeshore, N8391 Sand Point Road, P.O. Box 40, Munising, MI 49862-0040. A copy of the Environmental Assessment and errata sheet may also be found at www.nps.gov/piro.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading; for example [§ 7.32 Pictured Rocks National Lakeshore]) (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may

also e-mail the comments to this address: Exsec@ios.doi.gov.

Drafting Information: The primary authors of this regulation are: Larry Hach, Chief Ranger, Pictured Rocks National Lakeshore; Sarah Bransom, Environmental Quality Division; and Kym Hall, Special Assistant.

Public Participation

Comments on the proposed rule should be mailed to N8391 Sand Point Road, P.O. Box 40, Munising, MI 49862-0040. Comments may also be sent by e-mail to PIRO@den.nps.gov. If you comment by e-mail, please include "PWC rule" in the subject line and your name and return address in the body of your Internet message.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

List of Subjects in 36 CFR Part 7

District of Columbia, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under DC Code 8-137(1981) and DC Code 40-721 (1981).

2. Amend § 7.32 by adding paragraph (d) to read as follows:

§ 7.32 Pictured Rocks National Lakeshore.

* * * * *

(d) *Personal Watercraft (PWC).* (1) PWC are allowed on the waters within Pictured Rocks National Lakeshore, from the western boundary of the lakeshore to the east end of Miners Beach.

(2) PWC may only be launched from a designated launch site at Sand Point.

(3) At Sand Point Beach and Miners Beach, PWC users may only beach their craft.

(4) The Superintendent may temporarily limit, restrict, or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: November 4, 2004.

Paul Hoffman,

Deputy Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 04-25318 Filed 11-12-04; 8:45 am]

BILLING CODE 4310-70-P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM2005-1; Order No. 1423]

Periodic Reporting Rule

AGENCY: Postal Rate Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document addresses a dispute that has arisen over the Postal Service's compliance with certain periodic reporting rules. These rules are intended to facilitate participation in Commission proceedings by providing the public with data and information on cost methodologies and other matters. This notice describes the dispute and invites comments on this development, including suggestions on possible rule changes.

DATES: *Initial Comments:* December 6, 2004; *Reply Comments:* January 6, 2005.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, (202) 789-6818.

SUPPLEMENTARY INFORMATION:

Regulatory History

68 FR 2272, January 16, 2003.
68 FR 65348, November 19, 2003.

Summary

The Postal Rate Commission amended its Rules Applicable to the Filing of Reports by the U.S. Postal Service in its Order No. 1386, issued November 3, 2003. That order updated the rules to reflect new data systems and methodologies, and increased the amount of information the Postal Service was to submit to assist the Commission and foster effective public participation in Administrative Procedure Act (APA) hearings pursuant to 39 U.S.C. 3624.

The Postal Service opposed expansion of its obligations under 39 CFR