with the applicant. Rather, the capacity of an applicant's affiliates is to be included in the market share calculated for the applicant. To the extent available, the statement must include all pertinent data about storage or other alternatives and other constraining competition.

(5) *Statement E—potential competition.* This statement must describe potential competition in the relevant markets. To the extent available, the statement must include data about the potential competitors, including their costs, and their distance in miles from the applicant's facilities and major consuming markets. This statement must also describe any relevant barriers to entry and the applicant's assessment of whether ease of entry is an effective counter to attempts to exercise market power in the relevant markets.

(6) *Statement F—maps.* This statement must consist of maps showing the applicant's principal facilities, pipelines to which the applicant intends to interconnect and other pipelines within the area to be served, the direction of flow of each line, the location of the alternatives to the applicant's service offerings, including their distance in miles from the applicant's facility. The statement must include a general system map and maps by geographic markets. The information required by this statement may be on separate pages.

(7) *Statement G—market power measures.* This statement must set forth the calculation of the market concentration of the relevant markets using the Herfindahl-Hirschman Index. The statement must also set forth the applicant's market share, inclusive of affiliated service offerings, in the markets to be served. The statement must also set forth the calculation of other market power measures relied on by the applicant. The statement must include complete particulars about the applicant's calculations.

(8) *Statement H—other factors.* This statement must describe any other factors that bear on the issue of whether the applicant lacks significant market power in the relevant markets. The description must explain why those other factors are pertinent.

(9) *Statement I—prepared testimony.* This statement must include the proposed testimony in support of the application and will serve as the applicant's case-in-chief, if the Commission sets the application for hearing. The proposed witness must subscribe to the testimony and swear that all statements of fact contained in the proposed testimony are true and correct to the best of his or her knowledge, information, and belief.

§ 284.504 Periodic review requirement for market power determinations.

Applicants granted the authority to charge market-based rates under § 284.503 are required to file an updated market-power analysis within five years of the date of the Commission order granting authority to charge market-based rates, and every five years thereafter.

§ 284.505 Market-based rates for storage providers without a market-power determination.

(a) Any storage service provider seeking market-based rates for storage capacity, pursuant to the authority of Section 4(f) of the Natural Gas Act, related to a specific facility put into service after August 8, 2005, may apply for market-based rates by complying with the following requirements:

(1) The storage service provider must demonstrate that market-based rates are necessary to encourage the construction of the storage capacity in the area needing storage services; and

(2) The storage service provider must provide a means of protecting customers from the potential exercise of market power.

(b) Any storage service provider seeking market-based rates for storage capacity pursuant to this section will be presumed by the Commission to have market power.

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD44

Cape Lookout National Seashore, 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 Cape Lookout National Seashore, North Carolina. 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 directs 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 February 27, 2006.

ADDRESSES: You may submit comments, identified by the number RIN 1024–AD44, by any of the following methods:

- Federal rulemaking portal: *http://www.regulations.gov* Follow the instructions for submitting comments.
- Mail or hand delivery to: Superintendent, Cape Lookout National Seashore, 131 Charles Street, Harkers Island, NC 28531.
- For additional information see ''Public Participation'' under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Jerry Case, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 7241, Washington, DC 20240. Phone: (202) 208–4206. E-mail: *jerry_case@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

Additional Alternatives

The information contained in this proposed rule supports implementation of portions of the preferred alternative in the Environmental Assessment (EA) published January 2005. The public should be aware that two other alternatives were presented in the EA, including a no-PWC alternative, and those alternatives should also be reviewed and considered when making comments on this proposed rule.

Personal Watercraft Regulation

On March 21, 2000, the NPS published a regulation (36 CFR 3.24) on the management of 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 banned PWC use in all park units effective April 20, 2000, except for 21 parks, lakeshores, seashores, and recreation areas. The regulation established a 2-year grace period following the final rule publication to provide these 21 park units time to consider whether PWC use should be permitted to continue.

Description of Cape Lookout National Seashore

Cape Lookout National Seashore was established by Congress in 1966 to

conserve and preserve for public use and enjoyment the outstanding natural, cultural, and recreational values of a dynamic coastal barrier island environment for future generations. Cape Lookout National Seashore is a low, narrow, ribbon of sand located three miles off the mainland coast in the central coastal area of North Carolina and occupies more than 29,000 acres of land and water from Ocracoke Inlet on the northeast to Beaufort Inlet to the southwest. The national seashore consists of four main barrier islands (North Core Banks, Middle Core Banks, South Core Banks, and Shackleford Banks), which consist mostly of wide, bare beaches with low dunes covered by scattered grasses, flat grasslands bordered by dense vegetation, and large expanses of salt marsh alongside the sound. There are no road connections to the mainland or between the islands.

Coastal barrier islands, such as those located in Cape Lookout National Seashore, are unique land forms that provide protection for diverse aquatic habitats and serve as the mainland's first line of defense against the impacts of severe coastal storms and erosion. Located at the interface of land and sea, the dominant physical factors responsible for shaping coastal landforms are tidal range, wave energy, and sediment supply from rivers and older, pre-existing coastal sand bodies. Relative changes in local sea level also profoundly affect coastal barrier island diversity. Coastal barrier islands exhibit the following six characteristics:

- Subject to the impacts of coastal storms and sea level rise.
- Buffer the mainland from the impact of storms.
- Protect and maintain productive estuarine systems which support the nation's fishing and shellfishing industries.
- Consist primarily of unconsolidated sediments.
- Subject to wind, wave, and tidal energies.
- Include associated landward aquatic habitats which the non-wetland portion of the coastal barrier island protects from direct wave attack.

Coastal barrier islands protect the aquatic habitats between the barrier island and the mainland. Together with their adjacent wetland, marsh, estuarine, inlet, and nearshore water habitats, coastal barriers support a tremendous variety of organisms. Millions of fish, shellfish, birds, mammals, and other wildlife depend on barriers and their associated wetlands for vital feeding, spawning, nesting, nursery, and resting habitat.

Shackleford Banks contains the park's most extensive maritime forest as well as wild horses that have adapted to this environment over the centuries. The islands are an excellent place to see birds, particularly during spring and fall migrations. A number of tern species, egrets, herons, and shorebirds nest here. Loggerhead turtles climb the beaches at nesting time.

Purpose of Cape Lookout National Seashore

Cape Lookout National Seashore was authorized on March 10, 1966, by Public Law 89–366. Additional legislation, Public Law 93–477 (October 26, 1974), called for another 232-acre tract of land to be acquired, a review and recommendation of any suitable lands for wilderness designation, and authorized funding for land acquisition and essential public facilities.

The purpose of Cape Lookout National Seashore is to conserve and preserve for public use and enjoyment the outstanding natural, cultural, and recreational values of a dynamic coastal barrier island environment for future generations. The national seashore serves as both a refuge for wildlife and a pleasuring ground for the public, including developed visitor amenities.

The mission of Cape Lookout National Seashore is to:

- Conserve and preserve for the future the outstanding natural resources of a dynamic coastal barrier island system;
- Protect and interpret the significant cultural resources of past and contemporary maritime history;
- Provide for public education and enrichment through proactive interpretation and scientific study; and
- Provide for sustainable use of recreation resources and opportunities.

Significance of Cape Lookout National Seashore

Cape Lookout National Seashore is nationally recognized as an outstanding example of a dynamic natural coastal barrier island system. Cape Lookout is designated as a unit of the Carolinian-South Atlantic Biosphere Reserve, United Nations Educational, Scientific and Cultural Organizations (UNESCO) Man and the Biosphere Reserve Program. The park contains:

- Cultural resources rich in the maritime history of humankind's attempt to survive at the edge of the sea; and
- Critical habitat for endangered and threatened species and other unique wildlife including the legislatively protected wild horses of Shackleford Banks.

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 * * *.'' The 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 Clause and, as with the United States Coast Guard's authority, Commerce Clause 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.

Motorboats and other watercraft have been in use at Cape Lookout National Seashore since the park was established in 1966. It is unknown when PWC use first began at the national seashore. In compliance with the settlement with the Bluewater Network, the national seashore closed to PWC use in April 2002. Personal watercraft are prohibited from launching or landing on any lands, boat ramps or docks within the boundaries of the national seashore. Personal watercraft may not be towed on trailers or carried on vehicles within national seashore boundaries except at the Harker's Island unit. This closure pertains to all of the barrier islands within the national seashore and the waters on the soundside of the islands within 150 feet of the mean low waterline. Outside of the park boundary, PWC use is governed by North Carolina PWC regulations. At present, the areas that were previously used by PWC

owners for landing are closed with signs.

Prior to the PWC closure, all areas of the park were open to PWC use. However, the majority of PWC use was concentrated in two areas of the national seashore that receive the heaviest visitor day-use in the park: (1) On the sound-side of South Core Banks at the Lighthouse (from the Lighthouse dock through Barden Inlet and Lookout Bight), and (2) the Shackleford Banks from Wade Shores west to Beaufort Inlet. Personal watercraft use of ocean beaches was rare due to rough surf conditions in the ocean and the hazard of beaching PWC in the ocean surf. Some PWC use occurred along North and South Core Banks from Portsmouth Village at the northern end of the national seashore to the lighthouse. This use was infrequent because of the prevalence of marshes and general lack of sound-side beaches along Core Banks, the large expanse of open water in Core Sound between the barrier islands and mainland North Carolina, and the low population of the adjacent communities in the ''down east'' as this portion of the national seashore is known locally. At public meetings held in October 2001, several participants indicated they had used their PWC to travel from locations such as Atlantic and Davis to the barrier islands. The popularity of Cape Lookout and Shackleford Banks where PWC use was concentrated can be attributed to the excellent soundside beaches in these areas, the attraction of the Cape Lookout lighthouse, traditional use of Shackleford Banks, their proximity to major inlets, and their close proximity to the three largest coastal population centers in Carteret County: Atlantic Beach, Morehead City, and Beaufort.

Resource Protection and Public Use Issues

Cape Lookout National Seashore Environmental Assessment

As a companion document to this proposed rule, NPS has issued the Cape Lookout National Seashore, Personal Watercraft Use Environmental Assessment. The EA was open for public review and comment from January 24, 2005 to February 24, 2005. Copies of the EA may be downloaded at *http://www.nps.gov/calo/pphtml/documents.html* or requested by telephoning (252) 728–2250. Mail inquiries should be directed to park headquarters: Cape Lookout National Seashore, 131 Charles Street, Harkers Island, NC 28531.

The purpose of the EA was to evaluate a range of alternatives and strategies for the management of PWC use at Cape Lookout National Seashore to ensure the protection of park resources and values while offering recreational opportunities as provided for in the National Seashore's enabling legislation, purpose, mission, and goals. The analysis assumed alternatives would be implemented beginning in 2003 and considered a 10-year period, from 2003 to 2013.

The EA evaluates three alternatives concerning the use of PWC at Cape Lookout National Seashore. The alternatives considered include:

- *No-Action Alternative:* Do not reinstate PWC use within the national seashore. No special regulation would be promulgated.
- *Alternative A:* Reinstate PWC use as previously managed under a special regulation.
- *Alternative B:* Reinstate PWC use under a special NPS regulation with additional management prescriptions.

Based on the analysis prepared for PWC use at Cape Lookout National Seashore, alternative B is considered the environmentally preferred alternative because it would best fulfill park responsibilities as trustee of 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.

This document proposes regulations to implement alternative B at Cape Lookout National Seashore.

The NPS will consider the comments received on this proposal, as well as the comments received on the EA when making a final determination. In the final rule, the NPS will implement alternative B as proposed, or choose a different alternative or combination of alternatives. Therefore, the public should review and consider the other alternatives contained in the EA when making comments on this proposed rule.

The following summarizes the predominant resource protection and public use issues associated with PWC use at Cape Lookout National Seashore. Each of these issues is analyzed in the *Cape Lookout National Seashore, Personal Watercraft Use Environmental Assessment.*

Water Quality

Most research on the effects of PWC on water quality focuses on the impacts of two-stroke engines generally, and it is assumed that any impacts caused by these engines also apply to two-stroke engines in PWC. Two-stroke engines (and PWC) 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). Polycyclic aromatic hydrocarbons (PAHs) also are released from boat engines, including those in PWC. These compounds are not found appreciably in the unburned fuel mixture, but rather are products of combustion. Discharges of all these compounds—BTEX and PAHs—have potential adverse effects on aquatic life and human health if present at high enough concentrations. A common gasoline additive, methyl tertiary butyl ether (MTBE) is also released with the unburned portion of the gasoline. The PWC industry suggests that although some unburned fuel does enter the water, the fuel's gaseous state allows it to evaporate readily.

A typical conventional (i.e., carbureted) two-stroke PWC engine discharges as much as 30% of the unburned fuel mixture into the exhaust. At common fuel consumption rates, an average two-hour ride on a PWC may discharge three gallons (11.34 liters) of fuel into the water. The Bluewater Network states that PWC can discharge between three and four gallons of fuel over the same time period. However, the newer four-stroke technology can reduce these emissions to meet current regulatory standards for both water and air quality. The percentage of emissions of BTEX and MTBE compounds from four-stroke inboard or outboard motors is less than those from a two-stroke outboard engine or an existing two-stroke PWC engine.

Under the proposed regulation, based on alternative B in the EA, PWC use would be allowed within ten designated access areas, as identified in the ''Alternatives'' chapter of the EA and in the proposed rule. Personal watercraft within these access areas would be restricted to a perpendicular approach to the shoreline at flat-wake speed. Personal watercraft operation would be prohibited in park waters outside of the access areas. All state regulatory requirements would continue to apply. Because of the requirement for a perpendicular approach to the shoreline at flat-wake speed under this alternative, each PWC trip was assumed to be of only 5 minutes duration within park jurisdictional waters at 10% of full-throttle.

The results of the water quality analysis for PWC activity (table 24 of the EA) shows that for all discharged pollutants evaluated, the ecotoxicological threshold volumes estimated for 2003 and 2013 would be

well below volumes of water available at the study areas. Threshold volumes are less than an acre-foot, while water volumes in the park range from 3,890 to 6,810 acre-feet. Impacts on aquatic organisms would be expected to be negligible for all pollutants evaluated.

Threshold volumes for human health benchmarks of benzo(a)pyrene and benzene estimated for 2003 and 2013 are also less than an acre-foot, which is well below volumes of water available in the study areas. Impacts on human health would be expected to be negligible for all pollutants evaluated. Mixing, flushing, and the resulting dilution of park waters by adjacent waters would further reduce pollutant concentrations. Tidal currents at Beaufort and Ocracoke inlets reach speeds of up to 4 knots. Incoming tides more than double the available water volume. Outgoing tides transport soluble pollutants out of park waters to the Atlantic Ocean.

Overall, water quality impacts due to PWC emissions of organic pollutants in both 2003 and 2013 would be negligible.

Cumulative impacts associated with the implementation of alternative B under the proposed regulation would result from the cumulative activities taking place around Cape Lookout, including other motorized watercraft that use nearby waters and point and non-point sources of urban pollutants. Based on 2003 observations, on a typical peak use day, motorized watercraft are assumed to be distributed as follows: 565 at Shackleford Banks, 380 at South Core Banks, and 20 at North Core Banks. Assuming a 1.6% average annual increase (except for ferries), non-PWC numbers would increase by 2013 to 640 at Shackleford Banks, 430 at South Core Banks, and 24 at North Core Banks.

Threshold volumes calculated for all motorized watercraft are shown in table 25 of the EA. For all discharged pollutants evaluated, the ecotoxicological threshold volumes estimated for 2003 and 2013 would be well below volumes of water available in park jurisdictional waters in the study areas. Threshold volumes would be 37 acre-feet or less, while park jurisdictional water volumes range from 3,890 to 6,810 acre-feet. Impacts on aquatic organisms are expected to be negligible for all pollutants evaluated.

Threshold volumes for risks to human health from benzo(a)pyrene and benzene would also be well below the jurisdictional volumes in all areas in 2003 and 2013. Threshold volumes would be 44 acre-feet or less, while park jurisdictional water volumes range from 3,890 to 6,810 acre-feet. Risks to human health from benzo(a)pyrene and benzene, largely attributable to non-PWC use, would be expected to be negligible for all areas in 2003 and 2013.

Under the proposed regulation, water quality impacts from PWC use, based on ecotoxicological and human health benchmarks, would be negligible for all pollutants in all areas in both 2003 and 2013. Cumulative water quality impacts from all motorized watercraft under the proposed regulation, based on ecotoxicological benchmarks, would be negligible for all pollutants in all areas in both 2003 and 2013. Cumulative impacts on human health from all motorized watercraft would be negligible in 2003 and 2013. In 2013, cumulative water quality impacts from watercraft are expected to be lower than in 2003 due to reduced emission rates.

Therefore, implementation of this proposed regulation would not result in an impairment of water quality.

Air Quality

Personal watercraft emit various compounds that pollute the air. Up to one third of the fuel delivered to the typical two-stroke carbureted PWC engine is unburned and discharged; 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 PAH 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 (O_3). O_3 causes respiratory problems in humans, including coughs, airway irritation, and chest pain during inhalations. O_3 is also toxic to sensitive species of vegetation. It causes visible foliar injury, decreases plant growth, and increases plant susceptibility to insects and disease. CO 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 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 PWC are minimal (less than 5 tons per year), acid deposition effects attributable to PWC use are expected to be minimal.

Impacts to human health. Under the proposed regulation, special use areas would be identified where PWC could access Shackleford Banks, South Core Banks, and North Core Banks. Personal watercraft access could only access the beach in these areas and approach only perpendicular to the beach at flat-wake speeds. Personal watercraft use and access would be prohibited in all other areas of the national seashore. Safety and operating restrictions would be dictated by the North Carolina PWC regulations outlined under alternative A and additional NPS operating restrictions.

Human-health air quality impacts from the implementation of alternative B under this proposed regulation would be similar to those described for alternative A in the EA for 2003 and 2013 and would be negligible for CO, PM_{10}, HC, and NO_X. The human health risk from PAH would also be negligible in 2003 and 2013. The additional restrictions would not change the type of PWC in use, nor increase or decrease the number of PWC forecasted. Assuming that PWC are primarily used for transportation, the estimated daily duration of use of an individual PWC would decrease from 10 minutes under alternative A to 5 minutes under alternative B for both 2003 and 2013. Therefore, impacts would be negligible and at even lower levels than under alternative A.

Under the proposed regulation, cumulative impacts to human health from all boating use in the national seashore would not change from alternative A. Adverse impacts on human health from air pollutants in 2003 would be negligible for CO, PM_{10}, NO_X, and HC. In 2013, levels would remain negligible for CO, PM_{10}, NO_X, and HC.

Because no reduction in PWC use is expected, the proposed regulation would result in negligible air quality impacts on human health from PWC emissions, similar to alternative A. The additional management prescriptions would slightly reduce PWC emissions as compared with alternative A. Negligible adverse impacts from PWC emissions for CO, PM_{10}, HC, and NO_X would occur in 2003 and 2013. The risk from PAH would also be negligible in 2003 and 2013.

Cumulative adverse impacts from PWC and other boating emissions at the national seashore would be the same as for alternative A. Adverse impacts on human health from air pollutants in 2003 would be negligible for CO, PM_{10}, NO_X, and HC. In 2013, levels would remain negligible for CO, PM_{10}, NO_X, and HC. Regional ozone emissions

would improve due to a reduction in HC emissions.

This proposed regulation would have negligible adverse impacts on human health air quality conditions, with future reductions in CO and HC emissions due to improved emission controls. The PWC contribution to emissions of HC is estimated to be less than 5% of the cumulative boating emissions in 2003 and 2013. All impacts would be long-term.

Therefore, implementation of this proposed regulation would not result in an impairment of air quality as it relates to human health.

Impacts to air quality related values. Under the proposed regulation, the annual number of PWC using the Cape Lookout National Seashore would be the same as alternative A. Additional management prescriptions under the proposed regulation, including the adoption of special use areas, would not affect PWC use numbers and potential future increases. The predicted emission levels and impacts of continued PWC use to air quality related values would be similar to those described for alternative A based on annual emission rates. Assuming that PWCs are primarily used for transportation, the estimated daily duration of PWC use of an individual PWC would decrease from 10 minutes under alternative A to 5 minutes under alternative B for both 2003 and 2013. Impacts on air quality related values from PWC in 2003 and 2013 would be negligible.

Cumulative adverse impacts on air quality related values at the national seashore in both 2003 and 2013 would be the same as described under alternative A. HC contribution to ozone-related air quality values would be negligible. In 2013, NO_X emissions would slightly increase but would remain well below 50 tons per year, and there would be a reduction in HC emissions, resulting in a reduced contribution to ozone levels relative to 2003. Predicted year 2013 regional SUM06 ozone levels would be in the same range as year 2003; the impact would remain negligible.

The impacts of the proposed regulation on air quality related values would be the same as alternative A. Emissions of each pollutant would be substantially less than 50 tons per year in both 2003 and 2013. Negligible adverse impacts on air quality related values from PWC would occur in both 2003 and 2013. In both 2003 and 2013, adverse impacts from cumulative emissions from motorized boats and PWC would be negligible. This conclusion is based on calculated levels of pollutant emissions (table 31 of the EA), regional SUM06 values, and the lack of observed visibility impacts or ozone-related plant injury in the national seashore.

Therefore, implementation of this proposed regulation would not result in an impairment of air quality related values.

Soundscapes

The primary soundscape issue relative to PWC use is that other visitors may perceive the sound made by PWC as an intrusion or nuisance, thereby disrupting their experiences. This disruption is generally short-term because PWC are generally used as transportation to and from the islands. However, if PWC use changed from mostly transport to more extended recreational riding or if PWC use would increase and concentrate at popular visitation areas, such as Shackleford Banks and the lighthouse, related noise would become more of an issue, particularly during certain times of the day. Additionally, visitor sensitivity to PWC noise varies from kayakers (more sensitive) to swimmers at popular beaches (less sensitive).

Under the proposed regulation, PWC would be reinstated at Cape Lookout in specific locations. Personal watercraft would have access to areas that had been historically popular with PWC users; restrictions under this proposed regulation were based on safety reasons or the need to protect natural resources, particularly marshlands, which PWC avoid. However, all PWC operating within the special use areas defined under this proposed regulation would be required to operate at flat-wake speed within the national seashore's boundaries, which includes all waters from the mean low water line on the oceanside to 150 feet beyond the mean low water line. In addition, the area consisting predominantly of maritime forest along the soundside of Shackleford Banks would be closed to PWC use for safety reasons due to the high amount of visitor use in this area. Therefore, visitors using this area of Shackleford Banks would not experience adverse impacts because of the absence of PWC noise. Impacts throughout Shackleford Banks would be adverse, short-term, and minor.

The flat-wake speed restrictions would also lessen adverse impacts in the waters adjacent to the Cape Lookout lighthouse and the northern areas of the national seashore. Personal watercraft would be permitted access at specific locations along Core Sound, which were historically used by PWC in the past. Because most of the Core Sound consists of marshlands, PWC use along the South and North Core Banks was low before the ban, even during summer holiday weekends. For these reasons, noise impacts in the national seashore's northern reaches would be adverse, short-term, but negligible.

Combining PWC noise with other noise sources, such as other motorized vessels, beach activities, and off-road vehicle use, would increase the overall sound level at the national seashore. However, limiting PWC to flat-wake speed in all permitted areas of the national seashore would reduce adverse noise impacts considerably. Increased visitation expected to the Cape Lookout lighthouse would result in increased noise from both motorboats and PWC accessing this area. Therefore, cumulative impacts would be adverse, short-term, and negligible to minor under this proposed regulation, depending on location.

Personal watercraft would be permitted in areas historically preferred by PWC users under this proposed regulation, but only at flat-wake speed, resulting in adverse, short-term, negligible to minor impacts, depending on location. Cumulative impacts would be adverse, short-term, and negligible to minor under this proposed regulation, depending on location.

Therefore, implementation of this proposed regulation would not result in an impairment of the national seashore's soundscape.

Shoreline and Submerged Aquatic Vegetation

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

Personal watercraft are very maneuverable and can operate well in waters less than a foot deep. Since most PWC rides begin in shallow water, the process of getting started from a standstill results in a substantial amount of water being directed towards the bottom at high velocity, potentially disturbing the sediment and submerged aquatic vegetation in shallow water areas. Disturbance of submerged aquatic vegetation beds diminishes their ecological value and productivity, affecting the entire ecosystem. As PWC are frequently operated in shallow areas in a repetitive manner, impacts on submerged aquatic vegetation beds can be severe. Potential direct impacts on submerged aquatic vegetation beds by

PWC can occur through collision, uprooting of submerged aquatic vegetation, and alteration of natural sediments. Potential indirect impacts of PWC use include adverse effects on the growth and health of submerged aquatic vegetation beds as a result of increased turbidity, decreased available sunlight, and deposition of suspended sediment on plants.

Under this proposed regulation, PWC use would be allowed within 10 designated access areas, as identified in the ''Alternatives'' chapter of the EA and the proposed rule language. Personal watercraft operation within these access areas would be restricted to a perpendicular approach to the shoreline at flat-wake speed. Personal watercraft would be prohibited in park waters outside of the access areas. All state regulatory requirements would continue to apply.

These 10 designated access areas were chosen to avoid marshes and high-congestion beach areas. Indirect impacts from PWC use to shoreline vegetation would occur but would be limited to the designated access areas and would therefore be negligible to minor and short-term. Impacts on shoreline vegetation associated with low salt marsh habitats would not occur, since PWC use would be restricted in these areas.

As PWC would be prohibited in park waters outside of the access areas, submerged aquatic vegetation beds in these areas would not be directly impacted by PWC use. Most of the access areas do not contain submerged aquatic vegetation beds, so PWC operation in these areas would have little potential to adversely impact this habitat. Additionally, the flat-wake speed restriction would minimize the potential for PWC to damage submerged aquatic vegetation beds through collision or uprooting and would reduce sediment resuspension and its detrimental effects. Reinstating PWC use in park waters and restricting their operation to a flat-wake perpendicular approach to the shoreline in designated access areas would result in negligible, indirect short- and long-term impacts on submerged aquatic vegetation beds.

Under this proposed regulation, PWC use would be limited to flat-wake speed within ten designated access areas, resulting in a negligible contribution to cumulative impacts on shoreline vegetation and submerged aquatic vegetation beds. Adverse direct and indirect cumulative effects associated with future increased use by motorized watercraft, including PWC, would be minor around landing areas and in tidal marsh habitats. Non-PWC motorized vessels would be able to operate throughout park waters, including areas where submerged aquatic vegetation beds occur. Potential direct impacts on submerged aquatic vegetation beds by all motorized vessels include propeller scarring, collision, uprooting, and sediment alteration. Potential indirect impacts include increased turbidity, decreased available sunlight, and suspended sediment deposition on submerged aquatic vegetation beds. However, both PWC and non-PWC trip lengths are short and speeds are low, which reduces the likelihood of adverse impacts. As PWC are outnumbered by non-PWC motorized vessels in park waters by more than 10 to 1, and most PWC use would not occur around submerged aquatic vegetation beds, nearly all impacts on shoreline vegetation and submerged aquatic vegetation beds would be attributed to non-PWC vessels.

Impacts on shoreline vegetation and submerged aquatic vegetation beds from all types of motorized vessels under this proposed regulation are expected to be minor, direct and indirect, and short- and long-term.

Reinstating PWC use in park waters and restricting their operation to a flat-wake perpendicular approach to the shoreline in designated access areas is expected to have negligible, indirect short-term impacts on submerged aquatic vegetation beds and negligible to minor short-term impacts on shoreline vegetation. Non-PWC vessels would still be able to access submerged aquatic vegetation beds under this alternative, and would be responsible for nearly all of the cumulative motorized vessel impacts on submerged aquatic vegetation beds. Motorized vessels, including PWC, are expected to have minor, direct and indirect, short- and long-term cumulative impacts on shoreline vegetation and submerged aquatic vegetation beds.

Therefore, implementation of this proposed rule would not result in an impairment of shoreline vegetation and submerged aquatic vegetation beds.

Wildlife and Wildlife Habitat

Some research suggests that PWC use affects wildlife by causing interruption of normal activities, alarm or flight, avoidance or degradation of habitat, and effects on reproductive success. This is thought to be a result of a combination of PWC speed, noise, and ability to access sensitive areas, especially in shallow-water depths.

Waterfowl and nesting birds are the most vulnerable to PWC. Fleeing a disturbance created by PWC may force birds to abandon eggs during crucial embryo development stages, prevent nest defense from predators, or contribute to stress and associated behavior changes. Potential impacts on sensitive species, such as loggerhead sea turtles and piping plover, are documented in the ''Threatened, Endangered, or Special Concern Species'' section.

Aquatic wildlife react to high levels of underwater noise in various ways, depending on the species, exposure period, intensities, and frequencies. Because of the way PWC are used, noise is usually produced at various intensities, and this continual change in loudness during normal use makes PWC-generated noise much more disturbing than the constant sounds of conventional motorboats. The sudden increases in noise levels can startle aquatic wildlife, triggering flight responses. In areas of high boating use, the energy cost to aquatic fauna due to noise-induced stresses could be significant, potentially affecting their survival.

Intense sounds can inflict pain and damage the sensory cells of the ears of mammalian species, and there is concern that similar sounds can impair hearing in aquatic wildlife species. One of the few direct studies on the impact of sound on fishes conducted under laboratory conditions found that when fish were subjected to high decibel levels for four hours, some sensory cells of the ears were damaged. This damage does not show up until a few days after exposure, and it is a short-term effect (regeneration did occur after a few days). Fish exposed to high decibel noise levels may have a short-term disadvantage in detecting predators and prey, potentially adversely affecting their survival. In addition, several species of fish in the drum family produce sounds as part of their mating behavior, so short-term hearing damage could negatively affect reproduction. Loggerhead turtle nesting has been shown to be negatively affected by loud noises such as close overflights by aircraft, but it is unknown at what frequencies and intensity noise might affect sea turtles or damage their hearing.

Although marine mammals show a diverse behavioral range that can obscure correlations between a specific behavior and the impact from noise, experts from around the country have voiced concern that PWC activity can have negative impacts on marine mammals, disturbing normal rest, feeding, social interactions, and causing flight. Toothed whales (including dolphins), produce sounds across a broad range of frequencies for

communication as well as echolocation, a process of creating an acoustic picture of their surroundings for the purpose of hunting and navigation. Watercraft engine noise can mask sounds that these animals might otherwise hear and use for critical life functions and can cause temporary hearing threshold shifts. Bottlenose dolphins exposed to less than an hour of continuous noise at 96 dB experienced a hearing threshold shift of 12 to 18 dB, which lasted hours after the noise terminated. A hearing threshold shift of this degree would substantially reduce a dolphin's echolocation and communication abilities. In 1998 C. Perry reviewed numerous scientific studies documenting increased swimming speed, avoidance, and increased respiration rates in whales and dolphins as a result of motorized watercraft noise. Whales have been observed to avoid man-made noise of 115 dB, and at higher frequencies, whales become frantic, their heart rates increase, and vocalization may cease.

Bottlenose dolphins and manatees may be present in the waters surrounding Cape Lookout National Seashore in the summer months and could be affected by PWC-generated noise. Kemp's ridley, loggerhead, leatherback, and green sea turtles occur in the waters around Cape Lookout National Seashore, and three of these species have nested on park beaches. In addition, more than 200 species of fish probably occur in the waters surrounding Cape Lookout National Seashore. Essential fish habitat occurs in the vicinity of Cape Lookout for a number of commercially and recreationally important fish (refer to the ''Aquatic Wildlife'' section in the ''Affected Environment'' chapter of the EA).

This proposed regulation would establish 10 special use areas to provide PWC access within the Cape Lookout National Seashore boundaries. Personal watercraft use would be prohibited in all other areas of the national seashore.

Implementing flat-wake zones in these areas would limit adverse impacts on wildlife within the national seashore boundaries. Impacts of PWC use associated with noise and potential collision impacts with aquatic wildlife would be minimized within national seashore boundaries with the reduction of allowable speeds and adverse noise fluctuations. Negligible, short-term adverse indirect impacts on terrestrial and aquatic wildlife and habitat are expected under the proposed regulation, as noise would be reduced with the implementation of the flat-wake zone.

In areas previously open to PWC use that are not within the 10 special use areas, adverse impacts would be eliminated or reduced as PWC noise would be eliminated from these areas and would not create a disturbance to wildlife and wildlife habitats. As PWC would be prohibited in park waters outside of the access areas, aquatic wildlife in these areas would not be impacted by PWC use. In the designated access areas, the PWC flat-wake speed requirement and perpendicular approach would not generate waves and would minimize sediment resuspension and damage to seagrass beds. The flat-wake speed limit would further minimize PWC engine noise and fuel emissions to water. Aquatic wildlife species inhabiting the shallow waters and seagrass beds within the access areas would experience negligible impacts from PWC operation.

Reinstating PWC use in park waters and restricting their operation to a flat-wake perpendicular approach to the shoreline in designated access areas is expected to have short-term, negligible, direct and indirect adverse impacts on aquatic wildlife species and habitats.

Under the proposed regulation, motorized vessels, including PWC, would have adverse impacts on aquatic wildlife and habitats in park waters, especially in high-use areas such as Shackleford Banks and Lookout Bight. Because non-PWC vessels vastly outnumber PWC in park waters, most cumulative boating impacts on aquatic wildlife would be caused by non-PWC vessels and would be similar to those described under alternative A. Restricting PWC to access areas and flat-wake speed would result in a negligible contribution to cumulative impacts. Cumulative impacts on dolphins, sea turtles, fish and shellfish, and their habitats from all motorized vessel use are expected to be short-term, minor, direct and indirect, and adverse.

Impacts on terrestrial wildlife, specifically birds, from all motorized vessel use are expected to be short-term, negligible to minor, direct and indirect, and adverse. Noise levels and the ability of other motorized watercraft users to access Shackleford Banks and Lookout Bight are expected to adversely affect terrestrial wildlife and shorebirds and waterfowl that may utilize the landing area and adjacent areas by causing alarm or flight responses. Effects are expected to be negligible to minor because these areas have a generally high level of visitation, regardless of PWC usage, and species sensitive to a high level of noise and human activity would probably not regularly use these areas or immediately adjacent habitats during high use periods.

The proposed regulation would minimize potential adverse impacts of PWC use in the 10 designated special use areas to negligible to minor, short-term, adverse impacts. The flat-wake requirements would reduce the level of PWC disturbance in the restricted areas and in nearby marshes. Reinstating PWC use in park waters and restricting their operation to a flat-wake perpendicular approach to the shoreline in designated access areas is expected to have short-term, negligible to minor, direct and indirect adverse impacts on terrestrial and aquatic wildlife species and habitats.

Cumulative impacts associated with an increase in all types of motorized vessel use are expected to be short-term, negligible to minor, direct and indirect, and adverse.

Therefore, implementation of this proposed regulation would not result in an impairment of terrestrial or aquatic wildlife or habitats in park waters.

Threatened, Endangered, or Special Concern 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 listed as threatened or endangered. If the NPS 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.

At Cape Lookout National Seashore it has been determined that none of the alternatives are likely to adversely affect any of the listed species that are known to occur or may occur within or adjacent to PWC activity within the boundaries of Cape Lookout National Seashore.

National Park Service Management Policies 2001 state that potential effects of agency actions will also be considered on state or locally listed species. The NPS is required to control access to critical habitat of such species, and to perpetuate the natural distribution and abundance of these species and the ecosystems upon which they depend.

The species at Cape Lookout National Seashore that have the potential to be affected by proposed PWC management alternatives include species that are known to inhabit or are likely to inhabit the area, plus those that could possibly be found in the area, but would most likely be transients or migrants.

Under the proposed regulation, PWC use would be allowed within ten designated access areas, as identified in the ''Alternatives'' chapter of the EA and in the proposed rule language. Personal watercraft operation within these access areas would be restricted to a perpendicular approach to the shoreline at flat-wake speed. Personal watercraft operation would be prohibited in park waters outside of the access areas. All state regulatory requirements would continue to apply. This proposed regulation may affect, but is not likely to adversely affect, federally listed threatened or endangered terrestrial species in the Cape Lookout National Seashore. Effects to federally listed threatened or endangered species associated with PWC use under the proposed regulation would be similar to those discussed under alternative A. However, the potential for impacts would be further minimized due to reduced levels of activity and use. Enforcement of flat-wake zones in the ten designated special use areas would decrease potential for near-shore noise associated with the PWC use to adversely affect protected species such as the piping plover.

As PWC operation would be prohibited in park waters outside of the access areas, aquatic special concern species in these areas would not be impacted by PWC use. Manatees and whales are not likely to be present in park waters during the summer when PWC use is high. Sea turtles and the Carolina diamondback terrapin are likely to be present in park waters during the summer. These turtles may be affected but are not likely to be adversely affected by PWC use under this proposed regulation, because most park waters would be off-limits to PWC and because the flat-wake speed restriction would further reduce the potential for collision, as well as reducing engine noise production and fuel discharge to water.

Reinstating PWC use in park waters and restricting their operation to a flat-wake perpendicular approach to the shoreline in designated access areas may affect but is not likely to adversely affect aquatic special concern species.

The majority of piping plover nests are located on North Core Banks, which accounted for 10 out of 14 nesting pairs in 2003. The majority of PWC activity occurs at Shackelford Banks and the lighthouse area at South Core Banks. Sea beach amaranth, piping plover nesting, and gull-billed tern nesting areas are all roped off where present. These species generally occur in areas of low PWC use, and PWC use may affect but is not likely to adversely affect these species.

Under this proposed regulation, PWC use would be limited to flat-wake speed within designated access areas, resulting in a negligible contribution to cumulative impacts. Non-PWC motorized vessels would be able to operate throughout park waters. Because manatees are not common in the area and northern right whales and humpback whales are not likely to occur in park waters in the summer, PWC and other motorized watercraft use may affect but are not likely to adversely affect these species. As previously mentioned, trip lengths for PWC and non-PWC are short, and due to the park's very shallow waters, operation of these vessels primarily consists of slow speed operation. Because of these factors, PWC and non-PWC vessel use may affect but is not likely to adversely affect sea turtles or Carolina diamondback terrapins. Non-PWC vessels outnumber PWC in park waters by more than 10 to 1, so any motorized vessel impacts on special concern species would be predominantly attributed to non-PWC vessels.

Due to the location of sensitive species and the areas of high PWC use and other motorized watercraft being typically separate, PWC use and other motorized watercraft may affect but are not likely to adversely affect special concern species.

Reinstating PWC use in park waters and restricting their operation to a flat-wake perpendicular approach to the shoreline in designated access areas may affect but are not likely to adversely affect manatees or whales in park waters, as these species are not present in areas or during seasons of peak PWC use. Personal watercraft and other motorized vessel use may affect but is not likely to adversely affect sea turtles or Carolina diamondback terrapins because of the slow vessel speeds and short trip lengths.

Therefore, implementation of this alternative would not result in an impairment of aquatic special concern species in park waters.

Visitor Use and Experience

Some research suggests that PWC use is viewed by some segments of the public as a nuisance due to their noise, speed, and overall environmental effects, while others believe that PWC are no different from other motorcraft and that people have a right to enjoy the sport. The primary concern involves changes in noise, pitch, and volume due to the way PWC are operated. Additionally, the sound of any watercraft can carry for long distances, especially on a calm day.

Under this proposed regulation, PWC would have access to 10 areas distributed along the entire national seashore. These areas include those that were historically popular with PWC users, such as the Cape Lookout lighthouse area and the west end of Shackleford Banks. Fifty-one miles of the seashore's sound side and 56 miles of the oceanside would be closed to PWC use. Five of a total of 10 miles (50%) of soundside sandy beaches would be available to PWC use.

Impacts on PWC Users. Personal watercraft users would experience beneficial impacts, as they would have access to those areas that were historically popular with PWC riders. Personal watercraft would be restricted from the marshlands along the Core Banks, which they avoided anyway for practical reasons. With the exception of the closed areas between the two toilet facilities on Shackleford Banks and those in the lighthouse area of South Core Banks, PWC would have access to many of the areas frequented by PWC prior to the ban. Therefore, benefits would be similar to having access to the entire national seashore, with the exception of the restricted area on Shackleford and near the lighthouse. Impacts would be beneficial, long-term, and minor since approximately only 1% of all visitors would be affected.

Impacts on Other Boaters. Personal watercraft would return to popular areas such as the Cape Lookout lighthouse area and Shackleford Banks, with the exception of the restricted section. Under this proposed regulation, PWC users would be required to operate at flat-wake speed within park waters, providing a beneficial impact to all boaters, particularly kayakers and canoeists, who would be most affected by wakes and noise. Canoeists and kayakers paddling the marshlands along the Core Sound would experience negligible impacts from reinstated PWC use because PWC would be prohibited in marshland areas. Although some complaints have been submitted regarding PWC use in these areas, PWC have primarily avoided marshlands in the past. Boaters in the national seashore's northern reaches would experience few, if any, impacts, given the extremely low PWC use in this area in the past. Paddlers and motor boat operators using the west end of Shackleford near Beaufort Inlet or the Cape Lookout lighthouse area would experience the most adverse impacts due to congestion in these popular areas. Other motorized boat users would also interact with PWC, and may

experience adverse impacts for similar reasons. However, motorized boat users may find PWC use more compatible with their type of recreation. Depending on location, overall impacts on other boaters would be adverse, short- and long-term, and negligible to minor due to flat-wake PWC speed restrictions in park waters.

Impacts on Other Non-PWC Users. As with other boaters, other non-PWC users would experience benefits from flat-wake speed restrictions under this proposed regulation. The PWC restricted area along Shackleford Banks between the two toilet facilities would provide beneficial impacts on visitors in this area. A stretch of maritime forest fronts the sound in this restricted area, providing a natural, pristine wilderness setting that is popular with campers (Wade's Shore is located near the eastern toilet facility on Shackleford). Restricting PWC in this area would enhance wilderness values there, including preservation of the primeval character of the wilderness, natural conditions (including lack of man-made noise), outstanding opportunities for solitude, and a primitive recreational experience. Because most non-fishing visitors come to the national seashore seeking a remote beach experience, restricted PWC use under this alternative would provide a beneficial impact to these visitors. In addition, 89% of respondents during public scoping indicated that they were in favor of banning PWC from the national seashore. Therefore, a majority of visitors may perceive PWC use as incompatible with their experience at Cape Lookout National Seashore and would prefer restricted access, even though PWC represented only a small percentage of national seashore visitors.

Restricting PWC within national seashore waters to flat-wake speed would also be particularly beneficial to swimmers, anglers, and beach combers, who may be more likely to experience adverse impacts from PWC use than motorized boat users.

Short-term impacts on all visitors would occur depending on the duration of exposure to PWC during a given visit. Visitors would also experience long-term impacts in that PWC use would have restricted access to the national seashore indefinitely into the future.

Cumulative impacts would be similar to those described under alternative A in the EA regarding an increase in motorized boaters accessing the Cape Lookout lighthouse starting in 2005. However, flat-wake speed restrictions under this alternative would provide a benefit in areas of increasing congestion. An increase in boaters in Barden Inlet, combined with restricted, reinstated PWC use, would result in an adverse impact in this area. Combining restricted PWC use with other motorized boat use would result in an adverse impact. Even though only 1% of visitors used PWC to access the national seashore in the past, impact levels would be moderate due to expected increases in visitation.

Reinstating PWC use with restricted access would result in beneficial impacts on PWC users, but adverse, short- and long-term impacts on other boaters (motorized and nonmotorized) ranging from negligible to moderate depending on location and type of boat use. Cumulative impacts would be adverse, short- and long-term, and negligible due to the historically low numbers of PWC at the national seashore and additional PWC use restrictions.

Visitor Conflict and Safety

Industry representatives report that PWC accidents decreased in some states in the late 1990s. The National Transportation Safety Board reported that in 1996 PWC represented 7.5% of state-registered recreational boats but accounted for 36% of recreational boating accidents. In the same year PWC operators accounted for more than 41% of the people injured in boating accidents. Personal watercraft operators accounted for approximately 85% of the persons injured in accidents studied in 1997. Only one PWC-related injury has been reported at Cape Lookout National Seashore, although much of the waters in the area are outside of park boundaries and many incidents likely are not reported to any agency at all. The park currently does little or no water-based enforcement, which would be necessary to better identify PWC/visitor safety issues. Very few PWC violations have been documented by national seashore staff.

Personal watercraft speeds, wakes, and operations near other users can pose hazards and conflicts, especially to canoeists and sea kayakers. Kayakers and canoeists have complained about PWC, and other visitors have complained that PWC use conflicts with swimming and other beach activities.

Under this proposed regulation, PWC would be reinstated in 10 special use areas throughout the national seashore. All visitors would experience beneficial impacts due to restricting PWC to flat-wake speeds when operating within national seashore boundaries, which should reduce conflicts between PWC and other users, particularly swimmers, anglers, and nonmotorized boaters. In addition, park staff would support the state boater education program; if such support resulted in more PWC operators enrolling in the program, all visitors could experience beneficial impacts as 83% of all PWC operators involved in accidents in North Carolina in 2003 had no formal PWC education.

PWC Users/Swimmer Conflicts. Personal watercraft would have access to two special use areas on the soundside of Shackleford Banks, with a non-use area in between where the maritime forest fronts the shoreline. This non-use area was chosen based on congestion and safety issues at the island, where swimming and beach activities (including overnight camping) are common. Therefore, by restricting PWC use in this popular area, impacts on swimmers would be reduced compared to reinstating PWC throughout the entire island, and impacts would be negligible to minor and of short duration in this area.

PWC Users/Other Boater Conflicts. Other motorized watercraft frequent the same areas, including the soundside of Shackleford Banks and the areas near the Cape Lookout lighthouse. Under this proposed regulation, PWC would have access to the same areas that are popular with boaters. The lighthouse area has been popular with PWC users in the past and continues to be a strong attraction for all national seashore visitors. Personal watercraft would be permitted to operate in three use areas in the Cape Lookout Bight area, being most restricted in the boat docking areas and beach near the lighthouse and the marshes near Catfish Point. A landing zone 300 feet north of the NPS ferry dock should help distribute PWC users accessing this area. Such restrictions, along with flat-wake speed requirements, should help alleviate potential conflicts with other boaters in this popular area and keep adverse impacts at minor levels.

Personal watercraft would not be permitted to use marshlands along the North and South Core Banks, where kayakers have complained about PWC use in marshes from Cape Lookout north to New Drum Inlet. Conflicts and potential for accidents would be minimal farther north, where PWC use has historically been extremely low.

PWC Users/Other Visitor Conflicts. Personal watercraft users would continue to conflict with other national seashore users, such as anglers and other beach recreationists. However, anglers fishing near the maritime forest on Shackleford Banks would benefit from PWC prohibition in this area. No accidents or injuries between PWC and non-PWC users have been reported to national seashore staff, although some

could have occurred, particularly outside of the park's jurisdiction, and not been reported.

Overall, reinstating PWC use in restricted areas would result in adverse, short- and long-term impacts that would vary from negligible in low-use areas, to minor in localized, high-use areas where a small number of visitors would be affected due the low numbers of PWC accessing the national seashore in restricted use areas, as well as the flat-wake speed restrictions called for under this proposed regulation.

Cumulative impacts would be similar to those described under alternative A in the EA, although PWC use would be restricted to specific areas of the national seashore. When combined with increased visitation expected throughout the national seashore, particularly at the Cape Lookout lighthouse area, reinstating PWC would increase potential for conflicts and accidents, particularly in localized areas. However, the restrictions on Shackleford and the Cape Lookout area would help alleviate such problems. Therefore, cumulative impacts would be adverse, long-term and vary from negligible to moderate depending on location.

Reinstating PWC use in restricted areas would result in adverse, short- and long-term impacts that would vary from negligible in low-use areas, to minor in localized, high-use areas where a small number of visitors would be affected due the low numbers of PWC accessing the national seashore in restricted use areas. Cumulative impacts would be adverse, long-term and vary from negligible to moderate depending on location.

Cultural Resources

The environment at Cape Lookout National Seashore has deterred extensive human settlement in the area. Human occupation of the Outer Banks region initially occurred over 3,000 years ago by a hunting-fishing-gathering people. The peoples of the Outer Banks are considered to be small groups of extended families, such as the situation among the living Algonkian hunters of the North. Earlier peoples may have used the area, but there is a strong likelihood that wave action or other natural processes removed any very early sites long ago.

Little is known about the nomadic hunters on the islands, and specific information about the area up to the time of Colonial English occupation is lacking. Shell midden sites on the Shackleford Banks and at Cape Lookout are the only remains of early human occupation. However, these sites (most of which are outside the national seashore's jurisdiction) have been reduced to almost unintelligible remains.

Cape Lookout National Recreation Area has 36 recorded archeological sites. These sites are difficult to monitor and protect due to the changing landscape of the barrier islands. Shell middens were found on the islands in the past, but most have been washed away by storms. None of the aboriginal sites currently known to exist within the national seashore were felt to be culturally and scientifically significant enough to justify their nomination to the National Historic Register.

Of the 36 recorded archeological sites, some could potentially be impacted by PWC use at Cape Lookout. The majority of the sites exist on Shackleford Banks, primarily in the salt marshes; some are located on small, marshy islands adjacent to Shackleford. Little evidence of these sites remains due to advanced stages of erosion and other environmental factors. The sites have become damaged from overwash or are submerged at high tide, and only erosional remnants remain. Severe erosion and movement of the land mass have almost obliterated several sites. Some of the sites are covered with thick vegetation, obscuring portions of the site from view. One site has been affected by past use of the area by sheep and goats, to the extent that little evidence of the site remains intact. According to park staff, looting and vandalism of cultural resources is not a substantial problem.

Under this proposed regulation, PWC users would have access to specific locations within the national seashore. When riding within NPS jurisdiction, PWC would be required to operate perpendicular to the shore and at flat-wake speed. Therefore, impacts on archeological sites from wave action would be greatly minimized. In addition, very few PWC have historically used the national seashore, and most would not operate in salt marsh areas where many archeological sites are located, further reducing the potential for adverse impact. Therefore, no negligible long-term, adverse impacts from PWC wave action would be expected.

Potential impacts resulting from vandalism and illegal collection would be similar to those expected under alternative A. However, the PWC landing restrictions on Shackleford and Cape Lookout would prevent PWC from landing in areas with archeological sites. Although PWC users could land in the designated areas and walk to some sites, many are submerged or located in salt marshes on small satellite islands, which are difficult to access by foot or PWC. Other sites are obscured by thick vegetation and difficult to identify. Therefore, impacts from vandalism and looting (which have historically been insubstantial) are expected to be adverse, long-term, but negligible.

Impacts from other boaters and visitors would be combined with impacts from PWC users. However, impacts from vandalism and illegal collecting would be negligible due to the difficulty in identifying these sites, as described above. Adverse effects due to wave action from boats would continue to impact aboriginal sites, but would not be appreciably augmented by waves from PWC use due to the flat-wake speed and perpendicular approach restrictions described under this proposed regulation. Wild horses would continue to impact archeological sites as described under alternative A. Past use of the area by sheep and goats could have also adversely impacted these sites. Erosion due to natural causes would continue to result in the most damaging impacts on archeological sites. Therefore, cumulative impacts resulting from vandalism, illegal collecting, waves from boats, and wild horses would be adverse, long-term, and negligible.

Restricting areas of use and requiring PWC to operate perpendicular to the shore and at flat-wake speed within the national seashore's jurisdiction would minimize impacts on archaeological resources from wave action. Restricting areas of use would also minimize impacts resulting from vandalism and illegal collecting. Cumulative impacts would be adverse, long-term, and negligible.

Therefore, implementation of this proposed regulation would not result in an impairment of cultural resources.

The Proposed Rule

Under this NPRM, which is based on the preferred alternative, alternative B, a special regulation at 36 CFR 7.49 would reinstate PWC use at the national seashore. Under the proposed rule, special use areas would be identified where PWC could access certain sections of Shackleford Banks, South Core Banks, and North Core Banks. Personal watercraft would be prohibited in all other areas of the national seashore, and PWC would not be allowed to beach on the oceanside. Safety and operating restrictions would be dictated by the North Carolina PWC regulations outlined under alternative A and additional NPS operating restrictions.

The state of North Carolina ceded legal jurisdiction to the NPS for all land

and waters from the mean low water on the oceanside to 150 feet from the mean low water mark on the soundside. Waters beyond this 150 feet boundary within Back Sound and beyond the legislated boundary along Core Sound are managed by the state of North Carolina. National Park Service legal jurisdiction on the oceanside of Shackleford Banks, South Core Banks, and North Core Banks is to the mean low water mark.

Special Use Areas. Ten special use areas would provide for PWC access within Cape Lookout National Seashore boundaries. Personal watercraft would be allowed to access these areas on North Core Banks, South Core Banks (including Cape Lookout), and Shackleford Banks by remaining perpendicular to shore and operating at flat-wake speed. Under the proposed rule, PWC use would not be authorized for recreational use parallel to the shoreline, but only for access to those areas identified below specifically for landing purposes. In all cases, PWC would have access to the sound side of the barrier islands only. No PWC access to the seashore's ocean side would be permitted. The ten special use areas identified in the proposed rule include the following:

1. North Core Banks

- Ocracoke Inlet Access—Wallace Channel dock to the demarcation line in Ocracoke Inlet, near Milepost 1.
- Milepost 11B Access—Existing sound-side dock at Mile post 11B approximately 4 miles north of Long Point.
- Long Point Access—Ferry landing at Long Point cabin area (formerly called the Morris Marina Kabin Kamp) near Milepost 16.
- Old Drum Inlet Access—Soundside beach near Milepost 19 (as designated by signs), approximately ½ mile north of Old Drum inlet (adjacent to the cross-over route) encompassing approximately 50 feet.

2. South Core Banks

- New Drum Inlet Access—Sound-side beach near Milepost 23 (as designated by signs), approximately ¼ mile long, beginning approximately ½ mile south of New Drum Inlet.
- Great Island Access—Carly Dock at the Great Island cabin area (formerly called the Alger Willis Fish Camp) near Milepost 30 (noted as South Core Banks-Great Island on map).

3. Cape Lookout

- Lighthouse Area North Access—A zone 300 feet north of the NPS dock at the lighthouse ferry dock near Milepost 41.
- Lighthouse Area South Access—Sound-side beach 100 feet south of the ''summer kitchen'' to 200 feet north of the Cape Lookout Environmental Education Center Dock.
- Power Squadron Spit Access—Sound-side beach at Power Squadron Spit across from rock jetty to end of the spit.

4. Shackleford Banks

- Shackleford West End Access—Soundside beach at Shackleford Banks from Whale Creek west to Beaufort Inlet, except the area between the Wade Shores toilet facility and the passenger ferry dock.

Access and Wake Restrictions. Within these special use areas, all PWC would be required to remain perpendicular to shore and operate at flat-wake speed that would result in no visible wake within park waters.

Equipment and Emissions. As noted in the EA, the Environmental Protection Agency promulgated a rule to control exhaust emissions from new marine engines, including outboards and PWC. Emission controls provide for increasingly stricter standards beginning in model year 1999 (EPA 1996a, 1997). Under this alternative, it is assumed that PWC two-stoke engines would be converted to cleaner direct-injected or four-stroke engines in accordance with the Environmental Protection Agency's assumptions (40 CFR parts 89–91, ''Air Pollution Control; Gasoline Spark-Ignition and Spark-Ignition Engines, Exemptions; Rule, 1996). This proposed rule would not accelerate this conversion from two-stroke to four-stroke engines for PWC.

Visitor Education. Cape Lookout park staff would support the state boater education program by annually outlining state and park PWC regulations within park brochures such as the park newspaper. Park staff would educate visitors about PWC regulations in park and state waters to help them understand the differences between park regulations and PWC regulations for other local jurisdictions along the Outer Banks.

Cooperation with Local Entities. The park would work with local and state governments to encourage consistent PWC user behavior within state waters adjacent to park PWC special use areas. The park would like to encourage the state to define a PWC use zone in state waters adjacent to Cape Lookout National Seashore that would encourage flat-wake and perpendicular access to the shore.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and has not 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 NPS has completed the report ''Economic Analysis of Personal Watercraft Regulations in Cape Lookout National Seashore'' (MACTEC Engineering, December 2005). This document may be viewed on the park's Web site at: *http://www.nps.gov/calo/pphtml/documents.html.*

(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 not 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 NPS 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 NPS 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 ''Economic Analysis of Personal Watercraft Regulations in Cape Lookout National Seashore'' (MACTEC Engineering, December 2005). This document may be

viewed on the park's Web site at: *http://www.nps.gov/calo/pphtml/documents.html.*

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

The NPS has analyzed this rule in accordance with the criteria of the National Environmental Policy Act and has prepared an EA. The EA was available for public review and comment from January 24, 2005, to February 24, 2005. Copies of the EA may be downloaded at *http://www.nps.gov/calo/pphtml/documents.html* or requested by telephoning (252) 728–2250. Mail inquiries should be directed to park headquarters: Cape Lookout National Seashore, 131 Charles Street, Harkers Island, NC 28531.

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 § 7.49, Cape Lookout National Seashore.) (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: Robert A. Vogel, Superintendent, Wouter Ketel, Chief Ranger, Michael W. Rikard, Chief of Resource Management, Jeff R. Cordes, Resource Management Specialist, Michael E. McGee, Facility Manager, Donna Tipton, Administrative Officer, Cape Lookout National Seashore; Sarah Bransom, Environmental Quality Division; and Jerry Case, NPS, Washington, DC.

Public Participation

If you wish to comment, you may mail or hand deliver your comments to: Cape Lookout National Seashore, 131 Charles Street, Harkers Island, NC 28531. Comments may also be submitted on the Federal rulemaking portal: *http://www.regulations.gov* Follow the instructions for submitting comments. Please identify comments by: RIN 1024–AD44.

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 NPS 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 D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Add new § 7.49 to read as follows:

§ 7.49 Cape Lookout National Seashore.

Personal watercraft (PWC) may operate within Cape Lookout National Seashore only under the conditions specified in paragraphs (a) through (e) of this section and in the designated areas specified paragraph (f) in this section.

(a) PWC are allowed in the following areas only when remaining perpendicular to shore and operating at flat-wake speed.

(b) PWC use is not authorized for recreational use parallel to the shoreline, but only for access to the following areas specifically for landing purposes.

(c) In all cases, PWC have access to the sound side of the barrier islands only.

(d) PWC are prohibited in all areas of the national seashore except for the areas listed in paragraph (f) of this section. PWC are not allowed to beach on the oceanside.

(e) 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.

(f) PWC use is allowed only in the locations specified in this paragraph.

(1) North Core Banks:

Access	Location
(i) Ocracoke Inlet.	Wallace Channel dock to the demarcation line in Ocracoke Inlet near Milepost 1.
(ii) Milepost 11B.	Existing sound-side dock at mile post 11B approximately 4 miles north of Long Point.
(iii) Long Point	Ferry landing at the Long Point Cabin area.
(iv) Old Drum Inlet.	Sound-side beach near Milepost 19 (as designated by signs), approximately ½ mile north of Old Drum inlet (adjacent to the cross-over route) encompassing approximately 50 feet.

(2) South Core Banks:

Access	Location
(i) New Drum Inlet.	Sound-side beach near Milepost 23 (as designated by signs), approximately ¼ mile long, beginning approximately ½ mile south of New Drum Inlet.
(ii) Great Island Access..	Carly Dock at Great Island Camp, near Milepost 30 (noted as South Core Banks-Great Island on map).

(3) Cape Lookout

Access	Location
(i) Lighthouse Area North.	A zone 300 feet north of the NPS dock at the lighthouse ferry dock near Milepost 41.
(ii) Lighthouse Area South.	Sound-side beach 100 feet south of the ''summer kitchen'' to 200 feet north of the Cape Lookout Environmental Education Center Dock.
(iii) Power Squadron Spit.	Sound-side beach at Power Squadron Spit across from rock jetty to end of the spit

(4) Shackleford Banks West End Access Sound-side beach at Shackleford Banks from Whale Creek west to Beaufort Inlet, except the area between the Wade Shores toilet facility and the passenger ferry dock.

Dated: December 20, 2005.

Paul Hoffman,

Acting Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. E5–8003 Filed 12–28–05; 8:45 am]

BILLING CODE 4312–52–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 96

[EPA–HQ–OAR 2003–0053; FRL–8016–6]

Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule): Supplemental Notice of Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reconsideration; request for comment; notice of opportunity for public hearing.

SUMMARY: On May 12, 2005, EPA published in the **Federal Register** the final ''Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone'' (Clean Air Interstate Rule or CAIR). The CAIR requires certain upwind States to reduce emissions of nitrogen oxides (NO_X) and/or sulfur dioxide (SO_2) that significantly contribute to nonattainment of, or interfere with maintenance by, downwind States with respect to the fine particle ($PM_{2.5}$) and/or 8-hour ozone national ambient air quality standards (NAAQS). Subsequently, EPA received 11 petitions for reconsideration of the final rule. Through **Federal Register** notices dated August 24, 2005 and December 2, 2005, EPA previously initiated reconsideration processes on five specific issues in the CAIR and requested comment on those issues. In this notice, EPA is announcing its decision to reconsider one additional specific issue in the CAIR and is requesting comment on that issue.

The specific issue addressed in today's notice relates to the potential impact of a recent D.C. Circuit Court decision, *New York* v. *EPA*, 413 F.3d 3 (D.C. Cir. 2005), on the analysis used in developing CAIR to identify highly cost-effective emission reductions. This court decision vacated the pollution control project (PCP) exclusion in the New Source Review (NSR) regulations (the exclusion allowed certain environmentally beneficial PCPs to be excluded from certain NSR requirements).

The EPA is seeking comment only on the aspect of the CAIR specifically identified in this notice. We will not respond to comments addressing other provisions of the CAIR or any related rulemakings.

DATES: Comments must be received on or before February 16, 2006. If requested, a public hearing will be held on January 17, 2006 in Washington, DC. For additional information on a public hearing, see the **SUPPLEMENTARY INFORMATION** section of this preamble.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0053, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments. Attention Docket ID No. EPA–HQ–OAR–2003–0053.
- *E-mail: A-and-R-Docket@epa.gov*. Attention Docket ID No. EPA–HQ–OAR–2003–0053.
- *Fax:* The fax number of the Air Docket is (202) 566–1741. Attention Docket ID No. EPA–HQ–OAR–2003–0053.
- *Mail:* EPA Docket Center, EPA West (Air Docket), Attention Docket ID No. EPA–HQ–OAR–2003–0053, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center (Air Docket), Attention Docket ID No. EPA–HQ–OAR–2003–0053, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102; Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0053. EPA's policy is that all comments