



DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS-GUIS-28979; PPMPSAS1Z.YP0000]

RIN 1024-AE55

Gulf Islands National Seashore; Personal Watercraft

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to revise special regulations governing the use of personal watercraft at Gulf Islands National Seashore. The proposed rule would reduce the distance of flat wake speed zones from certain shorelines and codify existing closures at West Petit Bois Island and the Fort Pickens ferry pier.

DATES: Comments on the proposed rule must be received by 11:59 PM EST on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 1024-AE55, by either of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: www.regulations.gov.

Follow the instructions for submitting comments.

(2) *By hard copy:* Mail or hand deliver to: Superintendent, 1801 Gulf Breeze Parkway
Gulf Breeze, FL 32563.

Instructions: Comments will not be accepted by fax, email, or in any way other than those specified above. All submissions received must include the words “National Park Service” or “NPS” and must include the RIN 1024-AE55 for this rulemaking.

Comments received may be posted without change to www.regulations.gov, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov and search for “1024-AE55”.

FOR FURTHER INFORMATION CONTACT: Daniel R. Brown, Superintendent, Gulf Islands National Seashore, daniel_r_brown@nps.gov, (850) 934-2613.

SUPPLEMENTARY INFORMATION:

Background.

Gulf Islands National Seashore (the Seashore) encompasses the longest stretch of federally protected seashore in the United States. The Seashore includes seven barrier islands that span nearly 160 miles, coastal mainland, and adjacent waters in the northeastern part of the Gulf of Mexico. The Seashore comprises 139,175 acres within Mississippi and Florida, 4,630 acres of which (consisting of Horn and Petit Bois Islands) are designated wilderness. The resources of the Seashore vary widely, including marine, bayou, salt marsh, live oak, and southern magnolia forests.

Congress established the Seashore in 1971 in order to preserve for public use and enjoyment areas possessing outstanding natural, historic, and recreational values. 16 U.S.C. 459h(a). The National Park Service (NPS) administers the Seashore as a unit of the National Park System and has the authority to regulate the use of and management of the Seashore as it considers necessary or proper. 54 U.S.C. 100751(a). This includes the authority to regulate boating and other activities on water located within NPS units that is subject to the jurisdiction of the United States. 54 U.S.C. 100751(b).

The Seashore is one of the most heavily visited units in the National Park System. The Seashore attracts several million visitors from throughout the nation, who come to enjoy the beach and cultural and historic features. More than 80% of the Seashore is marine habitat and accessible only by boat or other watercraft. Many visitors use personal

watercraft (PWC) to access and enjoy the Seashore.

Compliance and PWC Regulations.

NPS general regulation 36 CFR 3.9 states that PWC may be used only where authorized by special regulation and that special regulations authorizing PWC use may be promulgated only for the 21 NPS units that are identified in that regulation, including the Seashore. In 2006, the NPS promulgated special regulations to manage the use of PWC at the Seashore. 71 FR 26244 (May 4, 2006). These regulations, which are found at 36 CFR 7.12, establish where PWC may be used, how they may be operated, and where they may be landed. Among other things, they permit PWC use in all waters of the Seashore where other motorized vessels are allowed.

In 2008, Bluewater Network and other environmental groups filed a lawsuit claiming that the Environmental Assessment (EA) supporting the special regulations was inadequate and violated the National Environmental Policy Act, the NPS Organic Act, and the Administrative Procedure Act. In 2010, the U.S. District Court for the District of Columbia held that the impact analysis in the EA was inadequate and remanded the EA to the NPS. Bluewater Network v. Salazar, 721 F. Supp.2d 7 (D.D.C. 2010). However, the court did not vacate the special regulations, which have continued to govern the use of PWC within the Seashore.

In June 2019, consistent with the court's decision, the NPS completed a Final Personal Watercraft Plan / Environmental Impact Statement (FEIS) that contains a more comprehensive analysis of the impacts of PWC use within the Seashore. The Record of Decision (ROD) for this project was originally approved by the NPS Regional Director of Interior Region 2 on August 13, 2019. Since that time, NPS revised the selected alternative to remove a prohibition on PWC landing below the mean high tide on Horn and Petit Bois Islands. On December 17, 2020, the Acting Regional Director signed an amended ROD with the PWC landing prohibition removed but all other elements of the

original selected action retained. The NPS believes the selected alternative will continue to protect natural and cultural resources at the Seashore, minimize conflicts between various users, and promote visitor safety while allowing for a variety of recreational experiences. A copy of the FEIS, ROD, and amended ROD which contain a full description of the purpose and need for taking action, the alternatives considered, maps, the environmental impacts associated with the proposed rule, and the basis for the selected alternative, can be found online at <http://parkplanning.nps.gov/guis>, by clicking on the link entitled “Personal Watercraft (PWC) Use Management Plan/EIS” and then clicking on the link entitled “Document List”.

Proposed Rule.

The proposed rule would implement the selected alternative identified in the amended ROD for the management of PWC use within the Seashore. The selected alternative would maintain the existing special regulation at 36 CFR 7.21, except as explained below.

Flat Wake Zones.

The existing special regulations prohibit the use of PWC at more than flat wake speed less than 0.5 miles from (i) either side of the pier of West Ship Island, and (ii) the shorelines of West Ship Island and the designated wilderness islands of Horn and Petit Bois. The existing flat wake speed zone extends 300 yards from all other shorelines within the Seashore. The proposed rule would reduce the size of the flat wake zone to (i) 300 yards from any shoreline in Mississippi (including the shorelines of Ship, Horn and Petit Bois islands) and (ii) 150 yards from any shoreline in Florida. Establishing consistent flat-wake zone distances within each district of the Seashore (Florida and Mississippi) should result in easier enforcement of and increased compliance with flat-wake zones. The 150-yard flat-wake zone in the Florida District would minimize impacts to commercial PWC rental businesses and visitor experience for PWC users. The

proposed boundaries of the flat wake zones are based on near-shore bathymetric information and research on PWC impacts to submerged aquatic vegetation and shorebird nesting that shows that in a water depth of 3 feet or more, PWC have little negative impact to seagrass beds (Continental Shelf Associates 1997; MDNR 2002). The average distance from shorelines in the Florida district to the 3-foot depth contour is 150 yards. Because similar 3-foot bathymetric data were not available for Mississippi, the proposed 300 yard flat wake zone in this district is based on the average distance to the 4-foot depth contour. NPS law enforcement staff may place temporary floating buoys in the water as reference points to show PWC users what 150 yards and 300 yards from the shoreline looks like. This would be done on an as-needed basis, determined by NPS personnel, and would likely occur on select high-use days and weekends.

Other Modifications.

The existing special regulations allow PWC use anywhere within the Seashore except at specific locations listed in the regulations. 36 CFR 7.12(c)(1). The proposed rule would add two locations to the list of closed areas: (i) the lakes, ponds, lagoons, and inlets of West Petit Bois Island; and (ii) within 200 feet of the ferry pier at Fort Pickens. West Petit Bois Island is a fast changing barrier island. According to historic aerial imagery at the time the existing special regulations were promulgated in 2006, West Petit Bois Island did not have lakes, ponds, or inlets as it does now. The Fort Pickens ferry pier did not exist in 2006. Construction was completed in 2012. These closures have been implemented by the NPS for years under the Superintendent's authorities in 36 CFR 1.5. They are consistent with existing closures for the lakes, ponds, lagoons, and inlets of other islands within the Seashore and for areas within 200 feet of the fishing piers at Fort Pickens.

The proposed rule would also replace references to West Ship Island and East Ship Island in the current regulations with a reference to Ship Island. In 2019, West Ship

Island and East Ship Island were restored to a single island as part of the Mississippi Coastal Improvements Program Comprehensive Barrier Island Restoration Project.

Compliance with Other Laws, Executive Orders and Department Policy.

Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. The OIRA has waived review of this proposed rule and, at the final rule stage, will make a separate decision as to whether the rule is a significant regulatory action as defined by Executive Order 12866. Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771)

Enabling regulations are considered deregulatory under guidance implementing E.O. 13771 (M-17-21). This rule would authorize the use of personal watercraft within Gulf Islands National Seashore in a manner that would otherwise be prohibited.

Regulatory Flexibility Act.

This rule 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 information contained in the economic analyses found in the

report entitled “Economic Analysis of the Personal Watercraft Proposed Rule at Gulf Islands National Seashore.” The document can be found online at <http://parkplanning.nps.gov/guis-PWC-EIS>, by clicking on the link entitled “Document List.”

Congressional Review Act (CRA).

This rule is not a major rule under 5 U.S.C. 804(2), the CRA. This 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. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

Takings (Executive Order 12630).

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132).

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary

impact statement. This proposed rule only affects use of federally-administered lands and waters. It has no outside effects on other areas. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988).

This rule complies with the requirements of Executive Order 12988. This rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian tribes (Executive Order 13175 and Department Policy).

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and have determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes. Nevertheless, in support of the Department of Interior and NPS commitment for government-to-government consultation, the NPS submitted a letter to 14 Indian tribes during the development of the FEIS. The Choctaw Nation of Oklahoma responded that the locations considered in the FEIS are within the Nation's area of historic interest, and because of the potential adverse impact to the coastal sites, requested to be a consulting party. NPS staff held a conference call with representatives of the Muscogee Creek Nation, Jena Band of Choctaw Indians, and Choctaw Nation of Oklahoma to discuss their concerns. The tribal representatives expressed concern over looting and vandalism, but were not very concerned about wakes from PWC damaging resources. The NPS explained how law enforcement actions and the Superintendent's

closure authority could help address their concerns.

Paperwork Reduction Act.

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act.

This rule implements, in part, a comprehensive management action for PWC at the Seashore that constitutes a major Federal action significantly affecting the quality of the human environment. The NPS has prepared the FEIS, ROD and amended ROD under the National Environmental Policy Act of 1969. A copy of the FEIS, ROD and amended ROD, which contain a full description of the purpose and need for taking action, the alternatives considered, maps, the environmental impacts associated with the proposed rule, and the basis for the selected alternative can be found online at <http://parkplanning.nps.gov/guis>, by clicking on the link entitled “Personal Watercraft (PWC) Use Management Plan/EIS” and then clicking on the link entitled “Document List”.

Effects on the Energy Supply (Executive Order 13211).

This rule is not a significant energy action under the definition in Executive Order 13211; the rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the rule has not otherwise been designated by the Administrator of OIRA as a significant energy action. A Statement of Energy Effects is not required.

Clarity of this rule.

We are required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1,

1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Drafting Information.

The primary authors of this regulation are Julia Larkin and Jay Calhoun, Division of Regulations, Jurisdiction, and Special Park Uses, National Park Service.

Public Participation.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section of this document.

Public availability of comments.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 36 CFR Part 7

National parks, Reporting and Recordkeeping requirements.

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

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

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

Authority: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under D.C. Code 10-137 and D.C. Code 50-2201.07.

2. Amend §7.12 by revising paragraphs (c)(1)(i) and (iii), (c)(2), (c)(3) introductory text and (c)(3)(i) to read as follows:

§ 7.12 Gulf Islands National Seashore.

* * * * *

(c) * * *

(1) * * *

(i) The lakes, ponds, lagoons, and inlets of Cat Island, Ship Island, Horn Island, West Petit Bois Island, and Petit Bois Island;

(iii) The areas within 200 feet from the remnants of the old fishing pier and within 200 feet from the new fishing pier and the ferry pier at Fort Pickens; and

(2) PWC may not be operated at greater than flat wake speed in the following locations:

(i) Within 300 yards from all shorelines in Mississippi; and

(ii) Within 150 yards from all shorelines in Florida.

(3) PWC are allowed to land at any point along the shore except as follows:

(i) PWC are prohibited on any shoreline adjacent to the closed areas listed in

paragraph (c)(1) of this section; and

* * * * *

George Wallace,
Assistant Secretary
for Fish and Wildlife and Parks.

[FR Doc. 2021-00312 Filed: 1/14/2021 8:45 am; Publication Date: 1/15/2021]