



## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 7

[NPS-OZAR-36399; Docket No. NPS-2022-0001;

PPMWOZARS0/PPMPSPD1Z.YM0000]

RIN 1024-AE62

Ozark National Scenic Riverways; Motorized Vessels

**AGENCY:** National Park Service, Interior

**ACTION:** Final rule.

**SUMMARY:** The National Park Service amends special regulations governing the use of motorized vessels within Ozark National Scenic Riverways. The changes will allow the use of 60/40 horsepower motors in the middle sections of the Current and Jacks Fork Rivers. The rule establishes seasonal closures in the upper sections of the rivers and limits the maximum horsepower of motorized vessels in other locations. These changes are slight modifications to restrictions on motorized vessels that have been in place since 1991.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** *Docket:* The comments received on the proposed rule and an economic analysis are available on [www.regulations.gov](http://www.regulations.gov) in Docket No. NPS-2022-0001.

*Document Availability:* The Final General Management Plan / Wilderness Study / Environmental Impact Statement (GMP/EIS), Record of Decision (ROD), and Errata Sheet to the GMP/EIS (Errata Sheet) provide information and context for this rule and are available online at <https://parkplanning.nps.gov/ozar>, by clicking on the link entitled “General Management Plan, Wilderness Study, Environmental Impact Statement” and

then clicking the link entitled “Document List.”

**FOR FURTHER INFORMATION CONTACT:** Lindel Gregory, Chief Ranger, Ozark National Scenic Riverways; (573) 323-4923; lindel\_gregory@nps.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services.

Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

#### *Purpose and Significance of Ozark National Scenic Riverways*

Congress established Ozark National Scenic Riverways (the Riverways) in 1964 to conserve and interpret the scenic, natural, scientific, ecological, and historic values and resources within the Riverways, and to provide for public outdoor recreational use and enjoyment of those resources. 16 U.S.C 460m. The Riverways includes portions of the Current and Jacks Fork rivers, encompassing 134 miles of clear, free-flowing, spring-fed waterways. The impressive hydrogeological character of the Riverways’ karst landscape supports an amazing variety of natural features, including a spring system unparalleled in North America. The cave system is equally impressive with one of the highest densities of caves in any unit of the National Park System.

The Riverways lies within the Ozark Highlands, an important center of biodiversity in North America. The Ozark Highlands are home to a rich array of wildlife and plants, including endemic species that exist nowhere else in the world. The Current and Jacks Fork rivers have been designated as Outstanding National Resource Waters in Missouri. The Riverways features archeological and historic structures, landscapes, and objects, reflecting ancient life in the Ozark Highlands. The extraordinary resources of the Riverways provide outstanding recreational opportunities and experiences on and along

free-flowing rivers.

### *Use of Motorized Vessels at the Riverways*

One of the recreational opportunities at the Riverways is the use of motorboats on the Current and Jacks Fork rivers. When the Riverways was created in 1964, the only outboard motorboats operating on the rivers were conventional propeller-driven motors with elongated shafts. The propellers of these motors could hit bottom in shallow water, resulting in propeller damage. As a result, operators outfitted their motors with a lever that would lift the propeller out of the water when the vessel skimmed across shallow areas. This naturally limited the size of most motorboats operating on the rivers to 20 horsepower (hp) or less because heavier motors were too difficult to lift. The only exception was the lower Current River, which is broader and deeper than the upper reaches of the Current and Jacks Fork rivers. In this lower section of the Current River, motorboats up to 40 hp could operate.

The status quo changed in 1976 when operators began to refit outboard motors with jet propulsion systems that could operate in inches of water. This eliminated the need to have the skills and experience to lift the propeller out of shallow water. As a consequence, the number of motorboats in the Riverways increased dramatically. The smaller traditional motors and shaft propellers were replaced with large outboard jet motors, some exceeding 250 hp. These larger motors generated greater speed (some in excess of 50 miles per hour) and larger wakes, and required more space to operate. This resulted in safety concerns and conflicts with other users of the rivers, including canoers, tube floaters, swimmers, and anglers.

In order to address these concerns, in 1991 the National Park Service (NPS) revised the special regulations for the Riverways at 36 CFR 7.83(a) to designate zones for motorboat operation, restrict horsepower, and limit the use of motorboats during certain seasons (56 FR 30694). The NPS also limited the use of motorboats to vessels equipped

with outboard motors. The nature of the shallow, narrow rivers precludes the safe use of inboard motors. These motors are capable of much greater speeds and need more water depth to operate due to increased weight.

Motor boating continues to be a popular activity and means of travel on the Current and Jacks Fork rivers. Visitors use motorboats to access fishing areas, cruise the river, and enjoy scenic views. Despite the existing regulations that manage motorboats within the Riverways, there are concerns about motorboats in certain sections of river. One concern is the effect of noise on visitors seeking a quiet experience. Another concern arises during the summer, when the number of motorboats on the rivers poses a safety hazard due to conflicts between different user groups competing for the same resources. Many access points along the rivers have become popular for concessioners and private individuals to launch nonmotorized watercraft, such as tubes, rafts, canoes, and kayaks. Often, groups of visitors seeking motorized and nonmotorized access enter the river at the same time and place, which can lead to congestion and conflicts. Once in the water, people in tubes, rafts, kayaks, and canoes can be overwhelmed by the wakes of motorized vessels. Over the past 20 years, the number of visitors using nonmotorized vessels on the rivers has steadily increased. If this number continues to increase, so too will crowding and conflicts among user groups.

#### *Summary of Public Comments*

The NPS published a proposed rule in the *Federal Register* on January 5, 2022 (87 FR 413). The NPS accepted public comments on the proposed rule for 60 days via the mail, hand delivery, and the Federal eRulemaking Portal at <https://www.regulations.gov>. Comments were accepted through March 7, 2022. The NPS received 408 comments on the proposed rule. Comments generally focused on balancing appropriate visitor uses, types and levels of access, and desired resource conditions. Although many commenters agreed the rivers were too crowded and expressed concern

about visitor behavior, there was no consensus about how the NPS should manage motorized vessels on the rivers. Many comments addressed the NPS's evaluation of the environmental impacts of the preferred and other alternatives in the GMP/EIS. These comments are not addressed in this final rule because they raise issues that the NPS already considered in the National Environmental Policy Act (NEPA) compliance process. The NPS evaluated the environmental impacts of each alternative in the GMP/EIS and explained why it selected the preferred alternative (Alternative B) in the ROD. The NPS did not identify any new significant environmental issues in the public comments on the proposed rule. After considering public comments and after additional review, the NPS made the following changes in the final rule.

1. In Table 1 to paragraph (b)(2), the NPS adjusted the northern boundary of the lower section on the Current River. This change will allow 150/105 hp motors from the lower end of the Van Buren Gap downstream to the southern boundary of the Riverways.

2. In Table 1 to paragraph (b)(2) and Table 2 to paragraph (b)(3), the NPS restated the geographic boundaries of the various sections of river as the ends of Van Buren and Eminence gaps, rather than as the intermediate boundaries of the Riverways at each gap. The NPS made these edits for clarity only; the edits did not change the actual boundaries of the sections of river.

3. In paragraph (b)(5), the NPS clarified that the designated access points do not mark the boundaries of the sections of river, which are identified in the tables. Instead, the final rule states that designated access points will have information about horsepower limits and seasonal closures in each section of river.

4. In paragraph (b)(7), the NPS added a statement that a violation of a restriction, condition, or closure implemented by the superintendent is prohibited.

5. In paragraph (b)(7), the NPS replaced a reference to paragraph (a) of 36 CFR 1.7 with a reference to section 1.7 in its entirety, to require that any restriction, condition,

or closure on the use of motorized vessels that is established by the superintendent is included in the superintendent's compendium, as required by paragraph (b) of section 1.7.

A summary of the pertinent issues raised in the comments and NPS responses is provided below.

*1. Comment:* Several commenters objected to allowing motorized vessels anywhere in the Riverways. Some commenters argued that doing so violates the mandate in the NPS Organic Act that units of the National Park System be managed to conserve the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. 54 U.S.C. 100101.

*NPS Response:* Through the NPS Organic Act, Congress granted the NPS broad discretion to regulate activities within System units, and the NPS has concluded that the selected alternative in the ROD, as amended by the Errata, will not result in unacceptable impacts or an impairment of resources in the Riverways. When it established the Riverways, Congress directed the NPS to include provisions for the use and enjoyment of the Current and Jacks Fork rivers by the people of the United States. 16 U.S.C. 460m. The NPS believes that continuing to allow motorized vessels on the Current and Jacks Fork rivers, as managed by this rule, is consistent with the NPS Organic Act and the enabling act for the Riverways.

*2. Comment:* Some commenters asked the NPS to eliminate the seasonal closures. Others suggested that the NPS allow only trolling motors in the upper sections during peak season. Several commenters objected to any prohibition of motorized vessels on the entire length of the Current and Jacks Fork rivers at any time. Some of these commenters cited long-standing use of motorized vessels on the rivers and access they provide for subsistence by local residents through gigging, fishing, trapping, and hunting. Another commenter suggested the NPS revise the definition of "peak season" to allow motorized

vessels to continue to operate on the Jacks Fork River into early May when water levels remain high enough and there are fewer floaters on the rivers.

*NPS Response:* The NPS believes this rule appropriately balances different types of recreation and access on the rivers by managing the power and location of motorized vessels. The seasonal closures on the upper sections of each river will create a quieter and safer recreational experience for visitors, as explained in the section-by-section analysis below. Although trolling motors are quieter and operate at lower speeds than gasoline-powered motors, they still create enough wake and potential for conflict with non-motorized uses to justify including them in the prohibition of all motorized use during peak season. They also utilize a propeller, which is ineffective in shallow areas of the upper stretches of the rivers and therefore limits their usefulness.

The NPS acknowledges there are strong cultural ties to gigging and trapping in the upper sections of the Current and Jacks Fork rivers. To accommodate these activities, the rule allows jet boats with engines rated up to 25 hp at the power head from the beginning of gigging season through the end of the statewide spring trapping season on public lands, as established by the Missouri Department of Conservation. For the 2024 season, those dates are September 1 through April 1. Rather than choose a fixed date each calendar year, aligning the rule with statewide gigging and spring trapping seasons will ensure that the use of motorized vessels has meaning for local residents.

While water levels are generally higher on the upper Jacks Fork River in the spring, this also is when that stretch becomes more heavily used by non-motorized vessels because water levels during the remainder of the year typically prevent floating activities.

3. *Comment:* Several commenters encouraged the NPS to establish a lower, more protective horsepower limit on the rivers, consistent with other federally protected rivers

in the Ozarks, such as the Buffalo National River (limit of 10 hp) and the Eleven Point Wild and Scenic River (limit of 25 hp).

*NPS Response:* All federally protected rivers, such as the Current River, Jacks Fork River, Buffalo River, and Eleven Point River, must be managed in accordance with the laws establishing their protected status. Within the scope of these mandates, however, Federal agencies have discretion to establish rules for visitor use that are tailored to the characteristics of each river, such as size, location, cultural and natural resources present, and visitor use patterns. The combination of these characteristics is unique to each river, even if some rivers share similar traits. The horsepower limits established by this rule are consistent with the legal protections for the Current and Jacks Fork rivers found in the NPS Organic Act and the Riverways' enabling legislation, and will allow for diverse opportunities for river-based recreation and access. Lower horsepower limits on the upper sections of each river will help avoid conflicts between motorized and non-motorized uses that can lead to undesirable visitor experiences and unsafe outcomes. Increasing horsepower limits downriver correlate to less frequent and less concentrated non-motorized use and changing physical characteristics of the rivers, such as increasing width and depth, that can better accommodate the speed and wake created by larger motors.

*4. Comment:* One commenter suggested lowering the maximum horsepower in the middle sections of the Current and Jacks Fork rivers. Another commenter recommended prohibiting motorboats in the entire length of the Jacks Fork River during peak season. Several commenters stated the 150/105 hp limit below Big Spring on the Current River is too high and suggested the 60/40 hp limit be extended to the southern boundary of the Riverways. Other commenters asked the NPS to prohibit motorboats on various segments of the Current River. Commenters advocating for lower horsepower or no motorboats at all claimed that the wakes generated by faster, larger motors and the

size of vessels equipped with those motors diminish the visitor experience and pose a greater safety risk to floaters compared to vessels with smaller motors. Other commenters stated that higher-powered vessels are loud, damage park resources, increase bank erosion, reduce water clarity, and negatively affect aquatic wildlife.

*NPS Response:* Alternative A in the GMP/EIS would have limited horsepower on the middle section of the Current River to 25 hp from Round Spring to Two Rivers, and prohibited motorboats on that segment of the river during peak season. Alternative A would have prohibited motorboats on the upper section of the Current River. It would have limited horsepower to 40 hp from Two Rivers to the southern boundary of the Riverways on the Current River, and prohibited motorboats year-round on the Jacks Fork River. The GMP/EIS did not evaluate an alternative that would have prohibited motorboats on the middle or lower sections of the Current River. The NPS believes that doing so would create significant adverse impacts to visitor access and recreation in the Riverways. The alternatives in the GMP/EIS were developed over several years through an iterative process that incorporated public input and new information at every step. The NPS evaluated potential impacts to the environment for each of the alternatives in the GMP/EIS and explained its decision to select Alternative B in the ROD.

5. *Comment:* One commenter expressed concern that the seasonal closure on the upper section of the Current River would prevent persons with disabilities from using motorized vessels to enjoy the river.

*NPS Response:* The NPS welcomes visitors of all types to the Riverways, including individuals with disabilities. The use of motorized vessels on the rivers is one of many recreational opportunities in the Riverways. In meeting the goal of accessibility, the NPS seeks to ensure that persons with disabilities are afforded experiences and opportunities along with other visitors to the extent practicable. For example, under the selected alternative in the ROD, the NPS will establish additional trails in the Riverways

that are accessible to persons with disabilities. In 2021, the NPS completed an Accessibility Self-Evaluation and Transition Plan with specific targets for improving visitor accessibility at a variety of facilities, campsites, and program experiences.

*6. Comment:* Several commenters objected to the provision establishing the superintendent's authority to close sections of the rivers.

*NPS Response:* Superintendents of all National Park System units have a general authority to establish closures, restrictions and conditions on visitor use or activity under 36 CFR 1.5. This rule will specify that – with respect to the use of motorized vessels in the Riverways – the superintendent may restrict or impose conditions on the use of motorized vessels, or close any portion of the Riverways, after taking into consideration public safety, protection of park resources, weather conditions and park management objectives. This provision establishes that the superintendent may take action to address changing conditions on the rivers to help protect resources and keep visitors safe. The superintendent needs this management tool because dynamic river environments can create unforeseen conditions that need to be addressed quickly. The superintendent may not increase visitor use and activity on the rivers in a manner that goes beyond what is authorized by the rule. As examples, the superintendent may not increase the maximum horsepower of motorized vessels beyond what is stated in the rule, or allow motorized vessels on the upper sections of the rivers year-round. These types of changes would require amendments to the regulations following a public notice-and-comment rulemaking process. Similarly, if the superintendent determines that closures, restrictions and conditions implemented to address unforeseen conditions should be made permanent, the NPS should then amend the regulations in 36 CFR 7.83 to reflect those actions following a public rulemaking process.

The rule requires the superintendent to notify the public of any restrictions, conditions or closures to motorized vessels in accordance with 36 CFR 1.7, which

includes publication of such actions in a written compilation that is referred to as the superintendent's compendium. The superintendent's compendium is available on the Riverway's website at <https://www.nps.gov/ozar/index.htm>.

7. *Comment:* One commenter suggested the NPS prohibit all motors with internal combustion engines and allow electric trolling motors only.

*NPS Response:* Electric trolling motors provide sufficient power and range to support certain types of motorized use on the rivers, such as drift fishing or moving boats for limited distances against the current. These types of motors, however, are not a reasonable alternative to gasoline-powered engines that are commonly used in johnboats for recreational purposes. Prohibiting gasoline-powered motors would result in a significant loss of recreational opportunities in the Riverways that the NPS did not consider in the planning process.

8. *Comment:* Several commenters stated that the 150 hp limit below Big Spring unnecessarily excludes a segment of the fishing and boating population and creates an undue burden on people who own vessels with larger horsepower motors. These commenters would allow unlimited horsepower in the lower section of the Current River. Several commenters questioned the correlation between maximum horsepower and wake. For example, some commenters asserted there is no difference in the wake created by jet boats with a 200 hp motors and 150 hp motors. One commenter stated that higher horsepower engines provide greater control and therefore a safer environment.

*NPS Response:* The NPS explains the reason for establishing a horsepower limit in the lower section of the Current River in the section-by-section analysis below. Many motors that exceed 150 hp are heavier, operated at higher speeds, and need more area to operate, which can create conflicts between other motorized and non-motorized vessels.

9. *Comment:* Several commenters stated a single horsepower limit throughout the rivers would be easier to communicate with visitors and easier to enforce, especially with

limited law enforcement officers. Other commenters stated there is a need for increased law enforcement on the rivers to manage increased visitation and to enforce the seasonal closures and horsepower restrictions in the rule. In particular, one commenter suggested the use of cameras to monitor vessel operations as an aid to enforcement.

*NPS Response:* A single horsepower limit would be easier to communicate and enforce. The relative difficulty of understanding and enforcing the rules, however, is not the only factor the NPS must consider when deciding how to manage motorized vessels. The selected alternative (Alternative B) calls for the NPS to hire additional law enforcement officers in order to improve visitor compliance with regulations. The NPS has 14 commissioned officers working varied shifts to support law enforcement activities throughout the Riverways. All of them are trained to enforce violations on the rivers. NPS law enforcement officers work closely with the Missouri Water Patrol and the sheriff's departments of surrounding counties to coordinate law enforcement activities. These agencies support law enforcement efforts by communicating violations that are reported or observed within the Riverways. The NPS utilizes cameras for a multitude of law enforcement activities, which may include enforcement of horsepower or other boating regulations.

*10. Comment:* Several commenters recommended the NPS install signs on the rivers that identify the upper, middle, and lower sections and the closures and horsepower restrictions that apply in each section.

*NPS Response:* Designated boat access points will be signed with information about horsepower limits and seasonal closures, so that anyone launching at designated sites will be aware of the rules. Installing signs at the actual boundaries of each section of river, which do not correlate to designated access points in every case, is problematic due to challenging riverbank terrain and the tendency for signs to be lost or damaged in

floods. Maps indicating the horsepower limits in the various sections of the rivers will be located at the Riverways headquarters in Van Buren, MO, and on the Riverways website.

*11. Comment:* One commenter suggested the NPS establish decibel and speed limits for motorized vessels.

*NPS Response:* Existing regulations address the noise and speed on vessels in the Riverways. NPS regulations at 36 CFR 3.15 limit the noise of vessels operating in all System units to 75 dB(A) measured using test procedures applicable to vessels underway (Society of Automotive Engineers SAE—J1970), or 88dB(A) measured using test procedures applicable to stationary vessels (Society of Automotive Engineers SAE—J2005). This section also authorizes NPS law enforcement officers to direct the operator of a vessel to submit the vessel to an on-site test to measure noise level.

Under 36 CFR 3.2(b), the NPS adopts certain State laws that restrict the speed of motorized vessels. Missouri law prohibits the operation of a vessel in excess of slow, no wake speed within 100 feet of a dock or any emergency vessel that has emergency lights displayed. Mo. Rev. Stat. §§ 306.125, 306.132. Missouri law also prohibits operating a motorboat in excess of 30 mph at any time from a half-hour after sunset until one hour before sunrise. Mo. Rev. Stat. § 306.125. NPS regulations at 36 CFR 3.8(b)(4) prohibit operating a vessel in excess of flat wake speed within 100 feet of a downed water skier, a person swimming, wading, fishing from shore or floating with the aid of a flotation device, a designated launch site, or from a manually propelled, anchored or drifting vessel. Speed also is a factor that can result in a violation of NPS regulations at 36 CFR 3.8(b)(8)-(9), which prohibit operating a vessel in a negligent or grossly negligent manner.

*12. Comment:* Several commenters opposed the seasonal closures on the upper sections of both rivers due to concerns that they would create economic hardship for local users, including fisherman and their families.

*NPS Response:* The NPS does not expect the seasonal closures to impact many visitors because of the physical characteristics of the upper sections of both rivers. The narrow and shallow nature of these sections prevents heavy motorized use, which the NPS believes to be approximately 5% of total visitation in those areas. The rule allows motorized vessels on the upper sections during State-defined trapping and gigging seasons so that local residents may continue to engage in those traditional activities for economic and recreational purposes. Fishing from riverbanks and while wading are allowed and popular on the upper stretches of the rivers where water is shallow.

*13. Comment:* Several commenters encouraged the NPS to move the northern boundary of the lower section of the Current River to allow 150/105 hp motors from the lower end of the Van Buren Gap to the southern boundary of the Riverways. Commenters stated that this change would allow visitors to launch bigger motors at the public and private launch sites in Van Buren, therefore decreasing pressure at Big Spring. Commenters also stated that this change would benefit residents who live along the river outside of the Riverways but within the Van Buren Gap, who own larger motors and keep their boats docked along the bank throughout the summer.

*NPS Response:* The NPS agrees with this recommendation and has changed the rule accordingly. The Errata Sheet amends the GMP/EIS to reflect the change to the northern boundary of the lower section of the Current River, which the NPS believes will make the horsepower limits easier to understand and enforce, and will relieve parking pressure on the Big Spring boat ramp.

*14. Comment:* One commenter suggested the NPS restrict the size of vessels rather than limit horsepower.

*NPS Response:* The NPS believes that limiting horsepower will achieve the desired result in the GMP/EIS and be easier to enforce than measuring boat size. NPS regulations at 36 CFR 3.8(a)(4) authorize superintendents of all System units to establish

length and width restrictions in accordance with 36 CFR 1.5 and 1.7. If, in the future, the superintendent of the Riverways determines that length and width restrictions are necessary for the maintenance of public health and safety, protection of environmental or scenic values, protection of natural or cultural resources, aid to scientific research, implementation of management responsibilities, equitable allocation and use of facilities, or the avoidance of conflict among visitor use activities, the superintendent may establish such restrictions in the superintendent's compendium for the Riverways.

*15. Comment:* Several commenters suggested the NPS manage motorized vessels by limiting them to certain days of the week. One commenter suggested that motorized vessels should be allowed on the upper section of the Current River on weekdays, but not weekends, to provide access to local residents without contributing to overcrowding at peak times.

*NPS Response:* The rule prohibits motorized vessels on the upper sections of both rivers during peak season to help maintain the safety of visitors and relieve overcrowding throughout the week. The volume of non-motorized vessels remains high on weekdays during peak season.

*16. Comment:* Some commenters stated that education was preferable to regulation and supported more public education about boating safety. One commenter asked the NPS to require all visitors who engage in water-based recreation take a water safety class. Another commenter suggested that commercial visitor service providers educate seasonal floaters about water etiquette and rules of navigation.

*NPS Response:* Boating and floating safety information courses are available through the Missouri Water Patrol, United States Coast Guard, and other organizations. The NPS provides educational information to floaters through authorized concessions and through public programs and interactions, as well as the on the Riverways website.

*17. Comment:* One commenter recommended the NPS manage use of the rivers by determining the number of visitors from each user group (e.g., motorized, non-motorized) that can be accommodated in different river locations. Other commenters recommended a permit system to manage motorized and non-motorized recreational use and suggested limits on the number of people that commercial outfitters can put into the rivers in specific locations on specific days.

*NPS Response:* Managing visitor use in the Riverways is inherently complex and depends not only on the number of visitors, but also on where the visitors go, what they do, and the impacts they have on resources and other visitors. In managing visitor use, NPS staff rely on a variety of management tools and strategies rather than relying solely on regulating the number of people in a specific area. Ever-changing visitor use patterns require a deliberate and adaptive approach to visitor capacity and visitor use management that would be hindered by placing strict limits on the number of user types in specific locations.

The NPS may develop an education outreach program to encourage voluntary dispersal of river users to reduce the number of watercraft in popular areas. The NPS may evaluate and modify concession contracts or operating plans to better distribute and manage the number of watercraft, both across times of day and by physical location. NPS staff also may consider a shuttle system to further disperse use on the rivers. Finally, if needed to ensure compliance with standards, the NPS may require watercraft permits. Implementation of some of these management actions may require additional planning, compliance and public involvement.

## **Final Rule**

### *Summary*

This rule will help accommodate a variety of desired river conditions and recreational uses, promote high quality visitor experiences, promote visitor safety, and

minimize conflicts among different user groups. It does this by making the following changes to existing regulations.

### *Measuring Horsepower*

Existing regulations, established in 1991, limit the horsepower of motorized vessels for the purpose of limiting the size and speed of motorized vessels to help ensure a safe and enjoyable experience for all visitor types. Larger motors generate greater speed, larger wakes, and require more space in proportion to their speed. The very nature of the shallow, narrow rivers, and channel and flow characteristics preclude the safe operation and navigation of oversized motorboats around obstacles and other users in certain sections of the Current and Jacks Fork rivers. Various combinations of channel depth and stream velocity sometimes require boaters to maintain sufficient momentum to get across the shallows, and into deeper waters, which poses a particular safety hazard to other visitors such as floaters and swimmers. Additionally, most vessels used on the Current and Jacks Forks rivers are not equipped with speedometers and are therefore unable to gauge their own speeds. Further, depending on whether a boat is traveling downstream or upstream, speedometers may not accurately gauge speed of travel. For these reasons, horsepower limits on outboard motors are the most effective means to ensure safety and achieve compliance.

Horsepower can be measured at the engine powerhead and at the final output. These measurements are virtually the same for outboard motors equipped with propellers. For motors equipped with jet propulsion systems, horsepower is approximately 30 percent less at the final output than at the powerhead. For purposes of complying with the horsepower limits, the existing regulations state that horsepower will be based upon power output at the propeller shaft as established by the manufacturer. 36 CFR 7.83(a)(2). This method of measuring power works well for motors with propellers that have not been modified to change final power output. This method is problematic,

however, for motors that were manufactured with propellers but then retrofitted with jet propulsion systems that lower the final power output below the maximum horsepower that was established by the manufacturer at the propeller shaft. These types of motors are popular with visitors to the Riverways because they can operate in shallow waters and enable the use of longer and wider boats capable of transporting four or more adults against the current of the rivers. The problem is that the existing regulations prohibit many of these motors even though they have a final power output less than or equal to the maximum horsepower that the NPS has determined is appropriate. In this way, the regulations are overinclusive.

For example, the existing regulations prohibit the use of motors that exceed 40 hp in the middle sections of the Current and Jacks Fork rivers. 36 CFR 7.83(a)(3)(i). The most popular type of motors in these sections are known as 60/40 hp motors. This indicates that the motors produce 60 hp at the powerhead but only 40 hp at the final output because they are equipped with a jet propulsion system. Some of these motors were manufactured with propellers and rated at 60 hp by the manufacturer, only to be retrofitted with jets. Others were manufactured with jet propulsion systems and for this reason could be rated at either 60 hp or 40 hp depending upon where the manufacturer measured the power. Under the existing regulations, retrofitted motors rated by the manufacturer at 60 hp are prohibited even though they now only have 40 hp of usable power. The method of measurement in the existing regulations is impracticable for vessels manufactured with jet propulsion systems because there was never a propeller shaft. In order to address this unintended outcome, the NPS has allowed 60/40 hp motors in the Riverways since 1999 under a Superintendent's memorandum.

This rule officially allows these popular motors in the middle sections of each river. The rule clarifies that, for purposes of complying with the regulations, maximum

horsepower means the maximum horsepower produced by the engine's powerhead.<sup>1</sup> The rule states that this measurement may be different than the maximum power measured at the final output or the maximum power rated by the manufacturer. The rule then adds tables that include maximum horsepower limits on each river that differ depending upon whether the motor has a jet propulsion system or a propeller. For the middle sections, 60 hp will be allowed for jet motors but only 40 hp will be allowed for propeller motors.

In the upper sections of the rivers, existing regulations prohibit the use of motors that exceed 25 hp measured at the propeller shaft by the manufacturer. 36 CFR 7.83(a)(3)(ii). In practice, the NPS has allowed 25 hp motors in the upper sections only if they are equipped with jet propulsion systems that lower the effective horsepower to 18 hp at the final output. The narrow and shallow nature of the upper sections make motors with more powerful outputs unsafe throughout the year. The rule changes the regulations to be consistent with this practice by allowing 25 hp motors with an attached jet unit and 18 hp motors fitted with a propeller.

#### *Seasonal Closures on the Upper Sections of River*

Existing regulations allow 10 hp motors in the upper section of the Current River from May 1 through September 15, and in the upper section on the Jacks Fork River from March 1 to the Saturday before Memorial Day. 36 CFR 7.83(a)(3)(iii)-(iv). This rule prohibits motorized vessels in these sections during peak season. This includes vessels using only a trolling motor. This closure applies to the full extent of the upper sections of each river, from the northern boundary downstream to Round Spring on the Current River, and from the western boundary downstream to the western boundary of the Eminence Gap on the Jacks Fork River. Existing regulations apply the seasonal 10 hp limit above Akers Ferry on the Current River and above Bay Creek on the Jacks Fork River, even though during off-peak seasons the 25 hp limits on the upper sections of each

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<sup>1</sup> This is consistent with the International Council of Marine Industry Association's Standard 28-83.

river apply downstream to Round Spring on the Current River, and from the western boundary downstream to the boundary at West Eminence on the Jacks Fork River.

Peak season is defined as beginning on the day after the last day of the statewide spring trapping season on public lands (usually around April 1) and ending on the day before the first day of gigging season for nongame fish (usually around September 15). These dates are determined annually by the Missouri Department of Conservation. Defining peak season in this manner, rather than using fixed dates, would allow visitors to use motorboats for lawful trapping and gigging activities without interfering with nonmotorized vessels (e.g., tubes, rafts, kayaks and canoes) when they are most popular. These upper sections of river are very narrow and shallow and do not receive heavy use from motorized vessels even during trapping and gigging seasons. A nonmotorized season provides opportunities for solitude and connection with nature that are not currently available during weekends and holidays in the summer. Visitors will be able to intimately experience conditions reminiscent of those that existed when the Riverways was established. The seasonal closures will also eliminate safety concerns and conflicts that arise when motorized and nonmotorized user groups are both present in these areas.

#### *Maximum Horsepower Limit on the Lower Section of River*

Existing regulations do not impose a horsepower limit on the lower section of the Current River. The rule establishes new horsepower limits in this section. The rule allows motors with propellers up to 105 hp. For the same reason that 60 hp motors will be allowed in the middle sections of the Current and Jacks Fork rivers if they are equipped with jet propulsion systems, the rule will allow 150 hp motors in the lower section of the Current River if they are similarly equipped. These limits are higher than the limits that will apply in the upper and middle sections of the rivers because the river below Big Spring is much broader and deeper. Currently, vessels with 225-300 hp motors are operating in this section of river. Motors such as these that are larger than the limits of

150/105 hp generate greater speed (some in excess of 50 mph), larger wakes, and require more space to operate. This results in serious safety concerns and conflicts with other users of the river, including canoers, tube floaters, swimmers, and anglers.

*Other Changes.*

The rule revises § 7.83(a)(1) of the existing special regulations to clarify that motorized vessels on the Riverways may have only one outboard motor. The rule clarifies that the motor count does not include electric trolling motors, which could accompany a vessel with a single outboard motor. For clarity, the revisions define the terms “inboard motor” and “outboard motor” and state that the use of inboard motors and personal watercraft is prohibited.

The rule allows the Superintendent to issue a permit for the operation of vessels with motors more powerful than the horsepower limits established by the rule. This allows the Superintendent to make exceptions in limited circumstances, such as when the NPS issues permits to the Missouri Department of Conservation for research activities on the rivers that, for safety or other reasons, require more power than is allowed by the rule.

The rule also includes a provision establishing the Superintendent’s authority to restrict or impose conditions on the use of motorized vessels, or close any portion of the Riverways to motorized vessels, after taking into consideration public safety, protection or park resources, weather conditions and park management objectives, provided public notice is given using one or more of the methods identified in 36 CFR 1.7. This clarifies the Superintendent’s authority to respond to emerging technologies or other unforeseen circumstances in order to help maintain a safe and enjoyable experience for visitors to the Riverways.

*Notice of Horsepower Restrictions.*

Maps indicating the horsepower limits in the various portions of the rivers will be located at Riverways headquarters in Van Buren, MO and on the Riverways’ website

(<https://www.nps.gov/ozar/index.htm>). The Superintendent will notify the public of the start and end dates for peak season through one or more of the methods listed in 36 CFR 1.7. The rule also adds a table to the special regulations that identifies each section of river and the applicable horsepower restrictions for that section during peak and non-peak seasons.

## **Compliance with Other Laws, Executive Orders, and Department Policy**

### *Regulatory Planning and Review (Executive Orders 12866, 13563, and 14094)*

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 14094 amends Executive Order 12866 and reaffirms the principles of Executive Order 12866 and Executive Order 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and be consistent with Executive Order 12866, Executive Order 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law.

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. The NPS has developed this rule in a manner consistent with these requirements.

*Regulatory Flexibility Act (RFA)*

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and regulatory flexibility analyses found in the report entitled “Draft Cost-Benefit and Regulatory Flexibility Threshold Analyses: Special Regulations Governing the Use of Motorized Vessels within Ozark National Scenic Riverways” that can be found on the Riverways’ planning website at <https://parkplanning.nps.gov/ozar>, by clicking the link entitled “General Management Plan, Wilderness Study, Environmental Impact Statement” and then clicking 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 (UMRA)*

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 NPS-administered waters, and imposes no requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

*Takings (Executive Order 12630).*

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. Access to private property adjacent to the Riverways will not be affected by this rule. A takings implication assessment is not required.

*Federalism (Executive Order 13132).*

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. The rule is limited in effect to Federal lands managed by the NPS and would not have a substantial direct effect on State and local government. A Federalism summary impact statement is not required.

*Civil Justice Reform (Executive Order 12988)*

This rule complies with the requirements of Executive Order 12988. Specifically, 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.

*Paperwork Reduction Act (44 U.S.C. 3501 et seq.)*

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act of 1969 (NEPA)*

The rule implements a portion of the preferred alternative (Alternative B) for the

Riverways described in the GMP/EIS. The NPS released a draft of the GMP/EIS that was available for public review and comment from November 8, 2013, through February 7, 2014. The NPS released the final GMP/EIS in December 2014. On January 22, 2015, the Acting Regional Director, Midwest Region, signed the ROD identifying the preferred alternative as the selected action. In January 2023, the NPS issued the Errata Sheet, which amended the GMP/EIS to move the northern boundary of the lower section on the Current River. The GMP/EIS describes the purpose and need for the plan, the alternatives considered, the scoping process and public participation, the affected environment and environmental consequences, and consultation and coordination. Copies of the GMP/EIS, ROD and Errata Sheet are available online at <https://parkplanning.nps.gov/ozar>, by clicking the link entitled “General Management Plan, Wilderness Study, Environmental Impact Statement” and then clicking the link entitled “Document List.”

*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. The NPS has evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and has determined that it has no substantial direct effects on federally recognized Indian Tribes and that consultation under the Department's Tribal consultation policy is not required.

The NPS consulted with culturally affiliated American Indian Tribes on the development of the GMP/EIS, including meetings in Oklahoma and Missouri in 2003, 2006, 2010. The NPS invited all Tribal representatives to visit the Riverways and to actively participate in the GMP/EIS planning process. As part of ongoing government-to-government relations, NPS staff will continue to consult with affiliated Tribes about planning and other actions in the Riverways that could affect the Tribes. NPS staff will

further consult with regard to specific actions and undertakings arising from the GMP/EIS that are proposed for future implementation. When appropriate, NPS staff provide technical assistance to the Tribes, including sharing information and resources, to address problems and issues of mutual concern.

*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 Administrator of OIRA has not designated the rule as a significant energy action. A Statement of Energy Effects is not required.

**List of Subjects in 36 CFR Part 7**

National Parks, Reporting and recordkeeping requirements.

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

**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. In § 7.83:

- a. Redesignate paragraphs (a) through (e) as paragraphs (b) through (f);
- b. Add a new paragraph (a); and
- c. Revise newly designated paragraph (b).

The addition and revision read as follows:

**§ 7.83 Ozark National Scenic Riverways.**

(a) *Definitions.* The following definitions apply to this section only:

*Inboard motor* means a marine propulsion system that is enclosed within the hull

of the vessel.

*Maximum horsepower* means the maximum horsepower produced by the engine's powerhead. This measurement may be different than the maximum horsepower at the final output or the maximum horsepower rated by the manufacturer.

*Off-peak season* means anytime that is not during peak season.

*Outboard motor* means a marine propulsion system that is mounted on the exterior of the vessel's hull.

*Peak season* means a period of time:

(i) Beginning on the day after the last day of the statewide spring trapping season on public lands, as determined by the Missouri Department of Conservation; and

(ii) Ending on the day before the first day of gigging season for nongame fish, as determined by the Missouri Department of Conservation.

(b) *Restrictions for motorized vessels.* (1) The following actions are prohibited on waters situated within the boundaries of Ozark National Scenic Riverways:

(i) Operating a motorized vessel with more than one outboard motor, not including an electric trolling motor.

(ii) Operating a motorized vessel with an inboard motor.

(iii) Operating a personal watercraft.

(2) The use of a motorized vessel is allowed on the Current River according to the seasonal restrictions and maximum horsepower limits set forth in table 1 to paragraph

(b)(2).

**Table 1 to Paragraph (b)(2).**

Current River	Section of River	Maximum Horsepower During Peak Season	Maximum Horsepower During Off-Peak Season
	<u>Upper Section</u>	Motorized vessels	25 hp (motor with jet unit)

	Northern boundary of the Riverways downstream to Round Spring	prohibited	18 hp (motor with propeller)
	<u>Middle Section</u> Round Spring downstream to the upper (northern) end of the Van Buren Gap	60 hp (motor with jet unit) 40 hp (motor with propeller)	60 hp (motor with jet unit) 40 hp (motor with propeller)
	<u>Lower Section</u> Lower (southern) end of the Van Buren Gap downstream to the southern boundary of the Riverways	150 hp (motor with jet unit) 105 hp (motor with propeller)	150 hp (motor with jet unit) 105 hp (motor with propeller)

(3) The use of a motorized vessel is allowed on the Jacks Fork River according to the seasonal restrictions and maximum horsepower limits set forth in table 2 to paragraph (b)(3).

**Table 2 to Paragraph (b)(3).**

	<b>Section of River</b>	<b>Maximum Horsepower During Peak Season</b>	<b>Maximum Horsepower During Off-Peak Season</b>
Jacks Fork River	<u>Upper Section</u> Western boundary of the Riverways downstream to the upper (western) end of Eminence Gap	Motorized vessels prohibited	25 hp (motor with jet unit) 18 hp (motor with propeller)
	<u>Middle Section</u> Lower (eastern) end of the Eminence Gap downstream to Two Rivers	60 hp (motor with jet unit) 40 hp (motor with propeller)	60 hp (motor with jet unit) 40 hp (motor with propeller)

(4) The maximum horsepower limits in this section may be exceeded pursuant to a written permit issued by the Superintendent.

(5) Maps indicating the horsepower limits in the various sections of the rivers are located at park headquarters in Van Buren, MO, and on the Ozark National Scenic

Riverways website. Signs at designated access points will have information about horsepower limits and seasonal closures in the upper, middle, and lower sections of river. The Superintendent will notify the public of the designated access points in accordance with § 1.7 of this chapter.

(6) Operating a motorized vessel in a manner not allowed by this paragraph (b) is prohibited.

(7) The Superintendent may restrict or impose conditions on the use of motorized vessels, or close any portion of the Riverways to motorized vessels, after taking into consideration public safety, protection or park resources, weather conditions and park management objectives. The Superintendent will provide notice of any such action in accordance with § 1.7 of this chapter. A violation of any such restriction, condition, or closure is prohibited.

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Matthew J. Strickler,  
Deputy Assistant Secretary  
Exercising the Delegated Authority of the Assistant Secretary  
for Fish and Wildlife and Parks.

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