



FINDING OF NO SIGNIFICANT IMPACT

Personal Watercraft Use

Cape Lookout National Seashore

The National Park Service (NPS) has prepared an Environmental Assessment (EA) that evaluates a range of alternatives and strategies for the management of personal watercraft (PWC) use at Cape Lookout National Seashore (Seashore) in order to ensure the protection of park resources and values while offering recreational opportunities as provided for in the park's enabling legislation, purpose, mission, and goals. The EA was prepared in accordance with the National Environmental Policy Act of 1969 (NEPA). The NPS is taking action to adopt special regulations to manage or discontinue PWC use within park units.

In May 1998, the Bluewater Network filed a petition urging the NPS to initiate a rulemaking process to prohibit PWC use throughout the National Park System. In response to the petition, the NPS issued an interim management policy requiring superintendents of parks where PWC use can occur but had not yet occurred to close the unit to such use until the rule was finalized. The NPS envisioned the servicewide regulation as an opportunity to evaluate impacts from PWC use before authorizing the use. On March 21, 2000, the NPS issued a regulation prohibiting PWC use in most units and required 21 units, including the Seashore, to determine the appropriateness of continued PWC use.

In response to the PWC final regulation, Bluewater Network sued the NPS, challenging the NPS' decision to allow continued PWC use in 21 units while prohibiting PWC use in other units. In response to the suit, the NPS and the Bluewater Network negotiated a settlement. While 21 units could continue PWC use in the short-term, each of those parks desiring to continue long-term PWC use would promulgate a park-specific special regulation. In addition, the settlement stipulates that the NPS must base its decision to issue a park-specific special regulation to continue PWC use through an environmental analysis conducted in accordance with NEPA. The NEPA analysis at a minimum, according to the settlement, must evaluate PWC impacts on water quality, air quality, soundscapes, wildlife, wildlife habitat, shoreline vegetation, visitor conflicts, and visitor safety.

On April 22, 2002, PWC use was discontinued at the Seashore. Since PWC use was discontinued, the Seashore has identified a preferred alternative that reinstates PWC use at ten special use areas under a special regulation with additional management prescriptions.

The purpose of the EA was to evaluate the effects of authorizing a special regulation to address the use of PWC within the park boundaries. Three alternatives concerning the use of PWC at the Seashore were evaluated which included two alternatives to reinstate PWC use under certain conditions: alternative A would reinstate PWC use under a special regulation as previously managed, and alternative B would reinstate PWC use under a special regulation with additional management prescriptions. In addition, a no-action alternative was considered that would continue the prohibition of all PWC use within the Seashore.

PREFERRED ALTERNATIVE

The NPS selected alternative (alternative B) is the preferred alternative and the environmentally preferred alternative in the EA. This alternative allows for the use of PWC within the Seashore boundary at ten special use areas with additional management prescriptions. With the adoption of the special regulation under alternative B, PWC use will be allowed as follows.

Special Use Areas. Ten special use areas would provide for PWC access within Cape Lookout National Seashore boundaries. PWC operators 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 this alternative, PWC may only be operated within the Seashore to access the following sound-side special use areas:

North Core Banks

- *Ocracoke Inlet Access* – Wallace Channel dock to the demarcation line in Ocracoke Inlet near Milepost 1
- *Long Point Access* – Ferry landing at the Long Point Cabin area
- *Milepost 11B Access* – Existing sound-side dock at Milepost 11B approximately 4 miles north of Long Point
- *Old Drum Inlet Access* – Sound-side beach near Milepost 19 (as designated by signs), approximately 1/2 mile north of Old Drum inlet (adjacent to the cross-over route) encompassing approximately 50 feet

South Core Banks

- *Great Island Access* – Carly Dock at Great Island Camp (noted as South Core Banks-Great Island on map)
- *New Drum Inlet Access* – Sound-side beach near Milepost 23 (as designated by signs), approximately 1/4 mile long, beginning approximately 1/2 mile south of New Drum Inlet

Cape Lookout

- *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
- *Lighthouse Area North Access* – A zone 300 feet north of the NPS dock at the lighthouse ferry dock near Milepost 41
- *Power Squadron Spit Access* – Sound-side beach at Power Squadron Spit across from rock jetty to end of the spit

Shackleford Banks

- *Shackleford 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

Access and Wake Restrictions. Within the ten special use areas, all PWC operators 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. The U.S. Environmental Protection Agency (EPA) 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. Under this alternative, it is assumed that PWC two-stroke engines would be converted to cleaner direct-injected or four-stroke engines in accordance with the EPA's assumptions (40 CFR Parts 89-91, "Air Pollution Control; Gasoline Spark-Ignition and Spark-Ignition Engines, Exemptions; Rule, 1996). The Seashore would not accelerate this conversion from two-stroke to four-stroke engines for PWC.

Visitor Education. The Seashore's park staff would support the State boater education program by annually outlining State and park PWC regulations within park brochures and 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.

State PWC Regulations. Current and future North Carolina PWC regulations would be enforced. PWC regulations from the State of North Carolina as of June 12, 2006 are detailed below:

- No one under 12 years old may operate a PWC in North Carolina waters. A person at least 12 years old, but less than 16 years old, may operate a PWC if he or she is riding with a person who is at least 18 or the youth has first successfully completed an approved boating safety education course (must carry proof of age and course completion while operating PWC).
- No one may operate a PWC on State waters between sunset and sunrise. All PWC riders, passengers, and those being towed must wear approved personal flotation devices.
- If the PWC is equipped with a lanyard-type engine cut off switch, the lanyard must be worn by the operator at all times.
- A PWC must have a rearview mirror or an observer on board besides the operator to legally tow someone on skis or similar device.
- PWC must be operated at all times in a reasonable and prudent manner. Maneuvers that endanger people or property constitute reckless operation.
- No person shall operate a PWC towing another person on water skis or similar device unless the total number of persons operating, observing, and being towed does not exceed the number of passengers identified by the manufacturer as the maximum safe load for the vessel.
- Reckless PWC operation includes the following:
 - Unreasonable or unnecessary weaving through congested boat traffic.
 - Jumping the wake of a vessel within 100 feet of the vessel or when visibility is obstructed.

- Intentionally approaching a vessel in order to swerve at the last moment.
- Operating contrary to the “rules of the road.”

Following too closely¹ to another vessel, including another PWC.

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

Superintendent’s Authority. The Park 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.

ADDITIONAL ALTERNATIVES CONSIDERED

As noted above, the EA evaluated three alternatives concerning the use of PWC at the Seashore:

- *Alternative A* would re-establish the PWC policies that existed prior to April 22, 2002, when PWC use was permitted. This alternative was not selected because it would result in adverse impacts to soundscapes, shoreline and submerged aquatic vegetation, wildlife and wildlife habitat, aquatic fauna, special status species, visitor experience, and visitor conflicts and safety.
- *Alternative B* allows for the use of PWC at ten special use areas and with additional management prescriptions, as described above. This alternative has been identified as the preferred alternative.
- *No-action alternative* would continue the prohibition of PWC use within the Seashore. This alternative was not selected because it did not meet the purpose, need, and objectives of the plan, as defined in the EA.

ENVIRONMENTALLY PREFERRED ALTERNATIVE

The environmentally preferred alternative is determined by applying the criteria suggested in NEPA, which is guided by the Council on Environmental Quality (CEQ). The CEQ Regulations for Implementing NEPA provide direction that “[t]he environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA’s Section 101”:

- fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- assure for all generations safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

¹ Following too closely - The term “following too closely” means proceeding in the same direction and operating at a speed in excess of 10 miles per hour when approaching within 100 feet to the rear or 50 feet to the side of another vessel that is underway unless that vessel is operating in a narrow channel, in which case a personal watercraft may operate at the speed and flow of other vessel traffic.

- attain the widest range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences;
- preserve important historic, cultural and natural aspects of our national heritage and maintain, wherever possible, an environment that supports diversity and variety of individual choice;
- achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities; and
- enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

The environmentally preferred alternative is alternative B. Alternative B will have limited impacts on the Seashore's natural resources through protection of shoreline areas with special use areas and flat-wake zoning prescriptions. In addition, the implementation of the flat-wake zoning under alternative B would meet park goals with respect to the protection of visitor experience and safety by implementing these restrictions in areas of high visitor activity. In the long-term, this alternative will support visitor enjoyment by allowing access to Seashore amenities by PWC users while accommodating other recreationists and meeting resource management objectives. This alternative would accommodate recreational opportunities for visitors while protecting sensitive natural resources within the Seashore. Alternative B is designed to meet the NPS general prohibition on PWC use for the protection of park resources and values, while providing recreational opportunities for PWC users.

Based on the analysis prepared for PWC use at the Seashore, alternative B is considered the environmentally preferred alternative by best fulfilling park responsibilities as trustee of sensitive habitat; by ensuring safe, healthful, productive, and aesthetically and culturally pleasing surroundings; and by attaining a wider range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences.

WHY THE PREFERRED ALTERNATIVE WILL NOT HAVE A SIGNIFICANT EFFECT ON THE HUMAN ENVIRONMENT

As documented in the EA, the NPS has determined that the preferred alternative (alternative B) can be implemented with no significant adverse effects to water quality, air quality, soundscapes, wildlife and wildlife habitat, threatened, endangered, or special concern species, shoreline vegetation, visitor experience, visitor safety, cultural resources, the socioeconomic environment, and Seashore operations and management. As defined in 40 CFR §1508.27, significance is determined by examining the following criteria:

Impacts that may be both beneficial and adverse: The settlement between NPS and Bluewater Network requires the NEPA analysis to evaluate PWC impacts to water quality, air quality, soundscapes, wildlife and wildlife habitat, shoreline vegetation, visitor conflicts, and visitor safety. PWC with two-stroke engines discharge a gas-oil mixture, which consists of hydrocarbons and polycyclic aromatic hydrocarbons, into the water, resulting in adverse effects on water quality. At the Seashore, hydrocarbon discharges to water are expected to decrease considerably over the next 10 years due to mandated improvements in engine technology. Pollutant emissions such as nitrogen oxides and volatile organic compounds from PWC use may adversely affect air quality, although boats and PWC would account for only a small fraction of air pollution compared to other sources. Personal watercraft noise may be more disturbing than other motorized vessels because of rapid changes in acceleration and direction of noise. Requiring PWC operators to remain perpendicular to shore within the ten designated access areas, coupled with flat-wake zoning restrictions, will reduce noise levels

from PWC in shoreline areas. PWC use will be prohibited on the seashore's ocean side. Marine mammals and sea turtles will be exposed to low levels of PWC noise, which will be minimized by the establishment of the special use areas and flat-wake restrictions.

The implementation of special use areas and flat-wake zoning will minimize impacts from PWC activity to terrestrial and aquatic wildlife species by restricting access and speed near shoreline habitat areas. Adverse impacts to fish and wildlife would be negligible to minor. PWC may affect, but is unlikely to adversely affect, special status species. Most of the ten designated access areas do not contain submerged aquatic vegetation beds, and the flat-wake speed restriction will minimize potential damage from PWC in the remaining areas. Impacts to low salt marsh habitats will not occur, since PWC use would be restricted in these areas.

Alternative B will have a beneficial impact on visitor experience for those visitors that utilize PWC, compared to banning PWC. The impact on other visitors, such as anglers, boaters, swimmers, divers, hikers, and campers would be negligible to minor and adverse.

Degree of effect on public health or safety: Implementation of the preferred alternative will result in negligible to minor effects on public health and safety. The preferred alternative will have negligible adverse impacts to water quality for all human health and ecotoxicological benchmarks analyzed. Impacts to air quality for carbon monoxide and other pollutants of concern will be negligible and adverse. The preferred alternative will maintain existing air quality conditions and will not result in an impairment of air quality. PWC use under the preferred alternative will have negligible to minor adverse impacts on swimmers, boaters, anglers, divers, campers, and hikers. However, the establishment of enhanced PWC user education programs will improve visitor safety overall.

Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, wetlands, wild and scenic rivers, or ecologically critical areas: The preferred alternative will not adversely affect unique characteristics of the area including prime farmlands, or wild and scenic rivers because these resources do not exist in the project area. Fort Macon State Park is located immediately west of Shackleford Banks across Beaufort Inlet. Although PWC use is prohibited at this State park, the preferred alternative will not adversely affect any of the Seashore's resources. Winter critical habitat is designated for the piping plover within the Seashore, and is discussed below under Critical Habitat.

Wetlands exist in numerous locations within the Seashore, generally as salt marshes. The ten designated access areas, as part of alternative B, were chosen to avoid marshes; therefore, impacts on shoreline vegetation associated with salt marsh habitats will not occur, because PWC use will be restricted in these areas.

Degree to which effects on the quality of the human environment are likely to be highly controversial: As discussed earlier, the EA was written under NEPA as a result of a settlement between the NPS and Bluewater Network. The impetus of the lawsuit was the result of studies in Everglades National Park on PWC use. Studies showed that PWC use resulted in damage to vegetation, adversely affected shorebirds, and disturbed the life cycles of other wildlife.

There were no other highly controversial effects identified during either preparation of the EA or the public comment period.

Degree to which the possible effects on the quality of the human environment are highly uncertain or involve unique or unknown risks: There were no highly uncertain, unique or unknown risks identified during either preparation of the EA or the public comment period.

Degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration: The preferred alternative neither establishes a NPS precedent for future actions with significant effects nor represents a decision in principle about a future consideration.

Whether the action is related to other actions with individually insignificant but cumulatively significant impacts: Cumulative effects were analyzed in the EA, and no significant cumulative impacts were identified.

Degree to which the action may adversely affect districts, sites, highways, structures, or objects listed on National Register of Historic Places (NRHP) or may cause loss or destruction of significant scientific, cultural, or historical resources: The Seashore has 36 recorded archaeological sites, primarily comprised of shell midden sites on the soundside of Shackleford Banks and at Cape Lookout. Most of these sites have been reduced to almost unintelligible remains, and none have been nominated to the NRHP. Restricting areas of use and requiring PWC operators to remain perpendicular to the shore and at flat-wake speeds would serve as a measure to minimize impacts on archaeological resources from wave action and illegal collection and vandalism. PWC users would have only negligible adverse impacts on archaeological resources.

Compliance with Section 106 of the National Historic Preservation Act was completed on May 3, 2006, when a response from the North Carolina State Historic Preservation Office was received. The SHPO determined that none of the alternatives is likely to adversely affect historic properties within the Area of Potential Effects.

Degree to which the action may adversely affect an endangered or threatened species or its critical habitat: Consultation under Section 7 of the Endangered Species Act was conducted to determine if any threatened or endangered species exist within the Seashore. Thirteen federally-listed animal species are documented and listed as occurring within the Seashore's boundaries, including finback whale, northern right whale, humpback whale, sperm whale, Florida manatee, American alligator, leatherback sea turtle, green sea turtle Kemp's ridleys sea turtle, loggerhead sea turtle, bald eagle, Roseate tern, and piping plover. In addition, two State-listed animal species (peregrine falcon and gull-billed tern) and 12 State Species of Special Concern (Carolina diamondback terrapin, Carolina water snake, Outer Banks kingsnake, brown pelican, common tern, glossy ibis, loggerhead shrike, tricolored heron, least tern, black skimmer, little blue heron, and snowy egret) have been identified within the Seashore. One federally-listed plant species, seabeach amaranth, occurs in the park.

Implementation of the proposed action may affect, but would be unlikely to adversely affect, the federally or State-listed species, as identified above, in the Seashore. The U.S. Fish and Wildlife Service (FWS) office concurred with the determination in a letter dated March 15, 2005. The National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) concurred with the determination in a letter dated June 7, 2006.

Critical Habitat

Winter critical habitat is designated for the piping plover within the Seashore on the east and west tips of Shackleford Banks and the south and north ends of both South Core Banks and North Core Banks. The majority of piping plover nests are located on North Core Banks, in areas of low PWC use. Nesting areas are roped off where present. PWC use may affect but is not likely to adversely affect the piping plover.

Essential Fish Habitat

The NMFS Habitat Conservation Division was consulted regarding Essential Fish Habitat (EFH) in accordance with the EFH provisions of the Magnuson-Stevens Fisheries Management and Conservation Act. The EFH for red drum and shrimp occurs in the Seashore area. In consideration of the potential impact to EFH and related fishery resources and a need to protect submerged aquatic vegetation habitat throughout the park, NMFS recommends “EFH Conservation Recommendation: To protect and conserve Essential Fish Habitat, either the No Action Alternative or Alternative B should be implemented.” Alternative B is the preferred alternative, which will comply with NMFS’ recommendations for conserving EFH.

Whether the action threatens a violation of Federal, State, or local environmental protection law:
The preferred alternative violates no Federal, State, or local environmental protection laws.

IMPAIRMENT OF PARK RESOURCES OR VALUES

In addition to reviewing the list of significance criteria, NPS staff determined that implementation of the preferred alternative would not constitute an impairment of the park’s resources and values. This conclusion is based on a thorough analysis of the impacts described in the EA, agency and public comments received, and professional judgment in accordance with the NPS’s *Management Policies, 2001* (December 27, 2000). As described in the EA, implementation of the preferred alternative will not result in major, adverse impacts to a resource or value whose conservation is (1) necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the Seashore; (2) key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park; or (3) identified as a goal in the park’s General Management Plan or other relevant NPS planning documents.

PUBLIC INVOLVEMENT

The NPS published a Notice of Availability and the proposed rule in the Federal Register on December 29, 2005 (70 FR 77089). The public was invited to comment on the EA for an approximate 30-day comment period that lasted from January 25, 2005 to February 23, 2005, and on the rulemaking from December 29, 2005 to February 27, 2006. The NPS received approximately 1,685 comment letters regarding the EA and proposed regulation. Six substantive comments were received that required changes to the EA. These comments are included in the attached Errata Sheets, along with changes to the EA text. A summary of Public Comments and Responses is also attached.

BASIS FOR DECISION

The preferred alternative does not constitute an action that normally requires preparation of an environmental impact statement (EIS). The preferred alternative will not have a significant effect on the human environment. Negative environmental impacts that could occur are negligible to moderate in intensity. There are no significant impacts on public health, public safety, threatened or endangered species, sites or districts listed in or eligible for listing in the NRHP, or other unique characteristics of the region. No highly uncertain or controversial impacts, unique or unknown risks, significant cumulative effects, or elements of precedence were identified. Implementation of the action will not violate any Federal, State, or local environmental protection law.

Based on the foregoing, it has been determined that an EIS is not required for this project and thus will not be prepared.

Recommended:

Robert A. Vogel
Superintendent,
Cape Lookout National Seashore

Date

Approved:

Patricia A. Hooks
Director, Southeast Region

Date