

to be applicable on navigable waters located within park boundaries irrespective of ownership of submerged lands. However, a recent court case concerning a seal shot in the navigable waters of a national park revealed that a 1987 editorial correction to 36 CFR 1.2(b), aimed at clarifying a separate and distinct application of the regulations, had the unforeseen and unintended effect of arguably linking federal title to submerged lands with the exercise of management authority over activities occurring on navigable waters. Rather than litigate this issue, this rulemaking will clarify the regulations thereby ensuring the continued protection of wildlife and other National Park System values and purposes on all navigable waters within parks, regardless of ownership of submerged lands. Accordingly, the revision clarifies that NPS regulations continue to apply on navigable waters, as they have for years. Two definitions, "park area" and "boundary," would be modified as a part of this revision. The proposed rule clarifies and interprets existing NPS regulatory intent, practices and policies, and generally would not place new or additional regulatory controls on the public.

DATES: Written comments will be accepted until February 5, 1996.

ADDRESSES: Comments should be addressed to: Associate Director, Operations, National Park Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Dennis Burnett, Ranger Activities Division, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127, Telephone (202) 208-4874.

SUPPLEMENTARY INFORMATION:

Background

The NPS Organic Act of 1916 directs the Secretary of the Interior and the NPS to manage national parks and monuments to "conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. 1. The Organic Act also grants the Secretary the authority to implement "rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and reservations under the jurisdiction of the National Park Service." 16 U.S.C. 3. In addition, the Organic Act was amended in 1978 to provide:

The authorization of activities shall be construed and the protection, management

and administration of [NPS] areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress. 16 U.S.C. 1a-1.

In addition to general regulatory authority delegated in 16 U.S.C. 3, the NPS has been authorized to "[p]romulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System, including waters subject to the jurisdiction of the United States * * *." 16 U.S.C. 1a-2(h). "Waters subject to the jurisdiction of the United States" include navigable waters. See, H. Rep. No. 1569, 94th Cong., 2nd Sess., 4292 (1976). Under these authorities the NPS has managed and regulated activities occurring on and in the waters of the National Park System.

Prior to 1966, NPS regulations for boating, sanitation and other regulations affecting waters were scattered throughout 36 CFR Parts 1 and 2. In 1966, consolidated boating regulations were published as 36 CFR Part 3. The regulations provided for the enforcement of U.S. Coast Guard regulations by the NPS "on navigable waters of the United States" located within park boundaries (31 FR 16650). In 1983, water-use activity regulations were moved from Part 2 to Part 3 (48 FR 30290). In addition to regulations generally applicable in all national park areas, special park-specific regulations have also been promulgated for, and enforced on and in navigable waters within the boundaries of National Park System units. See, e.g., 36 CFR 7.45 (f)-(h) (Everglades National Park, fishing and boating); 36 CFR 7.83(a) (Ozark National Scenic Riverways, boating); 36 CFR 13.65(b) (Glacier Bay National Park, Vessel Management/whale protection).

Applicability and Scope Provision

In 1982-83 the NPS undertook a comprehensive review of general regulations that apply in virtually all NPS administered areas (47 FR 11598). The applicability and scope provisions adopted pursuant to the 1983 rulemaking included navigable waters. In that rulemaking, 36 CFR 1.2(a) provided that the regulations contained in 36 CFR chapter 1 would apply: (1) on federally owned waters, and (2) on waters "controlled, * * * administered or otherwise subject to the jurisdiction of the National Park Service * * *." (48 FR 30252). In some park areas, the

United States holds title to the submerged lands under navigable waters. In other park areas, the United States does not hold title to the submerged lands beneath navigable waters within the boundaries of the park; Federal authority to regulate within the ordinary reach of these waters is based on the commerce clause, not ownership. Like the United States Coast Guard, the NPS exercises authority over navigable waters irrespective of ownership of submerged lands. 16 U.S.C. 1a-2(h). 36 CFR 1.2(a)(2) reflects the congressional intent that NPS regulations will also apply in these waters.

The 1983 regulations also provided that—except in park areas under the legislative jurisdiction of the United States, where 10 specifically enumerated provisions were intended to apply regardless of ownership—the regulations were "not applicable on privately owned lands and waters * * *." (48 FR 30252); 36 CFR 1.2(b). While 36 CFR 1.2(b) was specific as to the applicability of the 10 enumerated provisions on privately owned lands, it was silent as to the applicability of those 10 regulations on lands and waters owned by a state or other government entity. In 1987, in response to questions concerning this issue, and in order to clarify the original NPS intent (i.e., that the 10 specifically enumerated provisions were meant to apply on all lands and waters regardless of land ownership) the term "privately owned lands and waters" was replaced with the term "non-federally owned lands and waters". (52 FR 35238; see also, 52 FR 12037). The 1987 rulemaking emphasized that it was only an editorial change and not a substantive change, the sole purpose of which was to clarify the originally intended reach of the 10 enumerated provisions; there was no change intended concerning state lands.

However, in its effort to ensure that (in areas of legislative jurisdiction) the 10 enumerated regulations clearly apply on all "non-federally owned lands and waters" within the boundaries of park areas, the 1987 revision to Section 1.2(b) inadvertently incorporated language that seems ambiguous and could preclude park regulation of "non-federally owned * * * waters." See, 52 FR 35238, September 18, 1987. The NPS recognizes that regulations must provide an ordinary person a reasonable opportunity to know what is prohibited. Accordingly, this rulemaking is proposed to clarify that NPS regulations otherwise applicable within the boundaries of a National Park System unit apply on and within waters subject