



FINDING OF NO SIGNIFICANT IMPACT

Personal Watercraft Use

Bighorn Canyon National Recreation Area

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 Bighorn Canyon National Recreation Area 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 Environmental Assessment was prepared in accordance with the National Environmental Policy Act of 1969 (NEPA). 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 Park Service 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 Bighorn Canyon National Recreation Area, to determine the appropriateness of continued PWC use.

In response to the PWC final regulation, Bluewater Network sued the NPS, challenging the National Park Service's 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 the National Environmental Policy Act. 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 November 7, 2002, PWC use was discontinued at Bighorn Canyon National Recreation Area. Since PWC use was discontinued, Bighorn Canyon National Recreation Area has identified a preferred alternative that continues PWC use under a special regulation with new management strategies and additional locational restrictions.

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 Bighorn Canyon National Recreation Area were evaluated which included two alternatives to continue PWC use under certain conditions: alternative A would continue PWC use under a special regulation, and alternative B would continue PWC use under a special regulation with management restrictions. In addition, a no action alternative was considered that would discontinue all PWC use within the national recreation area.

PREFERRED ALTERNATIVE

The NPS preferred alternative and the environmentally preferred alternative is alternative B. This alternative allows for the continued use of PWC within the national recreation area boundary with additional closures of the reservoir south of the South Narrows. With the adoption of the special regulation under alternative B, PWC use will be allowed as follows.

Areas of Use / Location Restrictions. Locational restrictions include the following.

Areas that will be closed to PWC operations include:

- The reservoir and shoreline south of the area known as the South Narrows (legal description R94W, T57N at the SE corner of Section 6, the SW corner of Section 5, the NE corner of Section 7, and the NW corner of Section 8). Buoys would be installed to delineate the boundary, and personal watercraft users will be required to stay north of this boundary;
- Gated area south of Yellowtail Dam's west side to spillway entrance works, and Bighorn River from Yellowtail Dam to cable 3,500 feet north;
- At Afterbay Dam – from fenced areas on west side of dam;
- Afterbay Lake – Area between dam intake works and buoy/cable line 100 feet west;
- Government docks as posted;
- At Ok-A-Beh gas dock (customers excepted) and;
- From Yellowtail Dam upstream to the log boom.

Docking will be limited at courtesy docks at Ok-A-Beh, Barry's Landing, Horseshoe Bend, and at the Box Canyon Comfort Station Dock (exclusive of adjacent slips) to 15 minutes (official and concession vessels excepted); and Crooked Creek Bay will be closed to towing of people and personal watercraft use (refer to map 2 following the tables at the end of this chapter).

Wake Restrictions. Montana state regulations stipulate that flat-wake speed must be maintained when within 200-feet of a dock, swimmer, swimming raft, non-motorized boat or anchored vessel. Wyoming state regulations stipulate that no person operating a personal watercraft shall cross or jump the wake of another watercraft when within one hundred (100) feet of the watercraft creating the wake. In addition, NPS wake restrictions are in effect in several areas of the lake and the affected area is marked by buoys.

Safety / Operating Restrictions. Montana and Wyoming State laws will continue to apply to personal watercraft operators. The National Park Service is not instituting flat-wake regulations at Bighorn Lake; however, speed and proximity restrictions are administered according to state regulations. Both states define personal watercraft as boats or watercraft when addressing safe operations, the registering and numbering of vessels, and noise limitations (Montana). More specifically, the state of Montana requires that:

- All operators and riders to wear U.S. Coast Guard approved personal flotation devices (PFD).
- If the personal watercraft is equipped with a lanyard-type cord that shuts off the engine if the operator falls off the craft, the lanyard must be attached to the operator's wrist or personal flotation device.

- A “no wake” speed must be maintained when within 200 feet of a dock, swimmer, swimming raft, non-motorized boat or anchored vessel.
- Stand-up personal watercraft and personal watercraft towing a water skier must travel at a minimum speed necessary to operate when leaving from or returning to a dock or shore.
- Children 12 years old or younger may not operate a motorboat or a personal watercraft powered by a motor rated at more than 10 horsepower unless accompanied by someone 18 years of age or older. Youths 13 and 14 years of age may not operate those vessels without possessing a valid Montana motorboat operator’s safety certificate or evidence of completing an approved water safety course, or unless accompanied by someone 18 years of age or older.
- A person must be 18 years or older to rent a motorboat or personal watercraft powered by a motor rated at more than 10 horsepower.

Specifically, the state of Wyoming requires that:

- No person operating a personal watercraft shall cross or jump the wake of another watercraft when within 100 feet of the watercraft creating the wake.
- No person shall operate a personal watercraft unless the watercraft is equipped by the manufacturer with a “kill switch.” The kill switch shall be attached via a lanyard to the operator of the personal watercraft when it is underway in such a manner that in the event the operator is ejected from the personal watercraft the engine shall stop.
- All persons aboard personal watercraft shall wear a U.S. Coast Guard approved personal flotation device of a suitable size while engaged in such activity.

No persons shall operate or be in physical control of a numbered motorboat (this includes personal watercraft) unless the person is at least 16 years of age or accompanied by an adult.

Education. Bighorn Canyon will establish a PWC user education program implemented through vessel inspections, law enforcement contacts, and signing.

ADDITIONAL ALTERNATIVES CONSIDERED

As noted above, the EA evaluated two additional alternatives concerning the use of personal watercraft at Bighorn Canyon National Recreation Area:

- *Alternative A* would continue reestablish the PWC policies that existed prior to November 6, 2002, when PWC use was permitted under the current Superintendent’s Compendium.
- *Alternative B* allows for the continued use of PWC with additional locational restrictions, as described above. This alternative has been identified as the preferred alternative.
- *No action alternative* would discontinue all PWC use within the national recreation area.

ENVIRONMENTALLY PREFERRED ALTERNATIVE

The environmentally preferred alternative is determined by applying the criteria suggested in the National Environmental Policy Act of 1969 (NEPA), which is guided by the Council on Environmental Quality (CEQ). The CEQ provides 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;
- 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 would have impacts on the national recreation area's natural resources similar to those under alternative A. However, alternative B would better meet parks goals with respect to the protection of visitor experience and wildlife habitat by prohibiting PWC activities south of the Narrows. In the long term, this alternative would help visitors enjoy a beneficial use by allowing access to national recreation area amenities by PWC users while accommodating passive outdoor recreationists and meeting resource management objectives. This alternative would accommodate recreational opportunities for visitors while protecting sensitive natural resources. Alternative B is designed to meet the National Park Service's general prohibition on PWC use for the protection of park resources and values while providing access to the national recreation area by PWC operators in non-sensitive areas.

Based on the analysis prepared for PWC use at Bighorn Canyon National Recreation Area, 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 national recreation area 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 Bighorn Canyon National Recreation Area, hydrocarbon discharges to water are expected to decrease considerably over the next ten 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. The physical characteristics of the lake tend to amplify sound levels, particularly where boating noise is reflected off the cliffs adjacent to the water. However, formal complaints about PWC noise have not been received from visitors.

The preferred alternative would result in some beneficial impacts to wildlife as increased user awareness and a decreased area of PWC activity would reduce the likelihood of user and wildlife conflicts. The additional restricted portion includes the Yellowtail Wildlife Habitat area, typically an area of infrequent PWC use due to low water levels, but with potential for use when water levels are sufficient. Adverse impacts to fish and wildlife will be negligible to minor. Special status species will also benefit from the closure south of the South Narrows. No effect to these species is expected. The closure will also benefit wetland and riparian communities and other sensitive shoreline vegetation located in the Yellowtail Wildlife Habitat area south of the South Narrows. The remainder of the park lacks substantial areas of shoreline vegetation.

The preferred alternative will have a beneficial impact on visitor experience for those visitors that utilize PWC, compared to banning PWC. The use restriction south of the South Narrows will have a negligible adverse impact on PWC users, since this area is not popular with PWC users. The impact on other visitors, such as anglers, boaters, and swimmers, will be beneficial south of the South Narrows, and negligible to minor and adverse north of the South Narrows.

Degree of effect on public health or safety: Implementation of the preferred alternative would result in negligible to minor effects on public health and safety. The preferred alternative would 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 would be negligible and adverse. The preferred alternative would maintain existing air quality conditions and would not result in an impairment of air quality. PWC use under the preferred alternative would have negligible to minor adverse impacts on swimmers, boaters, anglers, and other visitors north of South Narrows, and beneficial impacts on visitor conflict and safety goals south of South Narrows. However, the establishment of enhanced PWC user education programs would 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 impact unique characteristics of the area including park lands, prime farmlands, or wild and scenic rivers because these resources do not exist in the project area. The Yellowtail Wildlife Habitat area is located in the southern end of the park, south of the South Narrows. PWC use will be prohibited in this area. The Pryor Mountain Wild Horse Range is located partly within the park adjacent to the west of steep canyon areas where PWC use does not typically occur.

Seven ponds and associated wetlands ranging in size from 1 to 75 acres exist in the Yellowtail Wildlife Habitat area. There are also several springs and associated wetland communities including Lockhart Springs near Lockhart Ranch and Willow Springs east of the buildings of the Mason-Lovell Ranch. Although these wetland areas occur within the national recreation area, they are not located in

areas of PWC use or in areas that are accessible to personal watercraft and would not be affected by PWC use.

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 impacted 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 National Park Service 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 or may cause loss or destruction of significant scientific, cultural, or historical resources: A total of four cultural and historic resources occur within the park including Bad Pass Trail, Cedarvale, Pretty Creek Archeological Site and Bighorn Ditch Headgate, none of which are within PWC use areas or landings. Submerged resources, while known to exist prior to completion of Yellowtail Dam, are undocumented. The most likely impact to archeological and submerged cultural sites would result from PWC users landing in areas otherwise inaccessible to most other visitors and illegally collecting or damaging artifacts. However, looting and vandalism of cultural resources is not a significant problem at the park, and a direct correlation of impacts attributed to PWC users is difficult to establish, since many of these areas are also accessible to backcountry hikers or other watercraft users. Compliance with Section 106 of the National Historic Preservation Act was completed on November 9, 2004. A response from the Montana State Historic Preservation Office was received on November 1, 2004, and a response from the Wyoming State Historic Preservation Office was received on November 9, 2004. Both SHPOs concur that no historic properties will be affected by the preferred alternative.

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 Bighorn Canyon National Recreation Area. According to communication between the U.S. Fish and Wildlife Service and Bighorn Canyon staff, and information from Wyoming Game and Fish, Montana Fish, Wildlife, and Parks, one federally-listed species (bald eagle), one proposed threatened species (mountain plover), and two federal species of concern (Rocky Mountain bighorn sheep and American peregrine falcon) may exist within the project area. In addition, seven Montana and Wyoming State Species of Special Concern (Townsend's big-eared bat, northern leopard frog, plains spadefoot toad, Hapeman's sullivania, Lesica's bladderpod, persistent sepal yellowcress, and sweetwater milkvetch) may occur within the national

recreation area. According to park staff, eleven of these species have been documented in the park, including bald eagle, American peregrine falcon, Rocky Mountain bighorn sheep, Townsend's big-eared bat, northern leopard frog, plains spadefoot toad, Hapeman's sullivantia, Lesica's bladderpod, persistent sepal yellowcress, sweetwater milkvetch, and rabbit buckwheat.

Implementation of the proposed action would not adversely affect federally listed threatened, endangered or special concern species in Bighorn Canyon National Recreation Area.

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 judgement in accordance with the National Park Service'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 Bighorn Canyon National Recreation Area; (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 National Park Service planning documents.

PUBLIC INVOLVEMENT

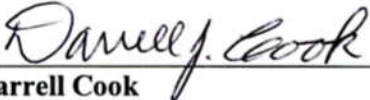
The National Park Service published a notice of the availability and the proposed rule in the Federal Register on May 5, 2004 (69 FR 25043). The public was invited to comment on the EA for an approximate 30-day comment period that lasted from June 9 to July 8, 2003, and on the rulemaking from May 5, 2004 to July 6, 2004. The National Park Service received approximately 2,463 comment letters regarding the proposed regulation. Two substantive comments were received that required changes to the EA. These comments are listed below, and the changes to the EA text is described on the Errata Sheet attached to this FONSI.

- Page 61 of the EA states, "Some individuals (i.e., bald eagles) nest along the Bighorn River south of the main reservoir, but the cottonwood trees in which the eagles nested were recently blown down, and new nest sites have not been identified (Roney [sic] 2003)". This is not accurate. We have known the location of an active bald eagle nest site since before 1998. The location of this nest and other data are available upon request. Other currently unknown bald eagle nests may also be present.
- Per the EA, page 168, the list of preparers indicates no local preparers. Why? How do we know if the consultants and other "experts" have been to the lake and really understand its use and local impact? Why is the park superintendent not on the list?


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 minor or 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 National Register of Historic Places, 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: 
Darrell Cook
Superintendent, Bighorn Canyon National
Recreation Area

4/21/05
Date

Approved: 
Michael D. Snyder
Acting Director, Intermountain Region

4/26/05
Date

