



February 17, 2006

Director Fran P. Mainella
U.S. Department of Interior
National Park Service
1849 C Street, NW
Washington, D.C. 20240
c/o Bernard Fagan

VIA E-Mail and FAX [waso_policy@nps.gov; 202-219-8835]

RE: Draft Management Polices to Guide the Management of the National Park System

Dear Director Mainella:

The National Marine Manufactures Association (NMMA) submits the following comments in response to the National Park Service’s (NPS) request for public comment on its draft update to the policies that guide the management of the national park system. *Notice of Availability of Draft National Park Service Management Policies*, 70 Fed. Reg. 60,852 (Oct. 19, 2005).

The National Park Service has completed a review and revision of the policies that guide the management of the national park system. These policies are compiled in a book called *Management Policies*, last published in 2001. Park superintendents, planners, and other NPS employees use management policies as a reference source when making decisions that will affect 388 units of the national park system.

NMMA is the nation’s largest recreational marine industry association, representing more than 1,500 boat builders, engine manufacturers, and marine accessory manufacturers. NMMA members collectively produce more than 80 percent of all recreational marine products made in the United States. With 13 million registered boats and almost 69 million boaters nationwide, the recreational boating industry contributes \$33 billion annually to our nation’s economy. NMMA is interested in the NPS management policies because the Service oversees many units of the national park system that include bodies of water popular with boater visitors. NMMA would like to be clear that it supports the efforts of the National Park Service to preserve the nation’s public waters and lands for future generations. However, our members want to be sure that recreational boating activities are given due consideration by the NPS and not unreasonably restricted in management of park system units. To that end, we offer the following comments to the Service’s draft management policies:

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NPS Managers Must Seek the Appropriate Balance of Conservation and Recreation Objectives

These draft revised policies have ignited a healthy debate about the proper interpretation of the key phrase on the purpose of the national parks in the National Park System Act (16 U.S.C. §§ 1–20):

to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations.¹

Some have argued that the current management policies interpreting this key phrase tilted too far in favor of preservation, while others have argued that the new draft tilts too far in the favor of access. It is NMMA's contention that this important statutory mandate and these draft national park system management policies reflect the necessary and appropriate balance of both conservation and recreation objectives. Congress did intend for parks to be used and enjoyed by the public; however, Congress also wanted park managers to use sound management practices to ensure that our nation's park resources will endure. In short, recreation or enjoyment of the National Parks is a "coequal primary purpose of national parks."² In addition, it is imperative that unit managers understand that not all parks can be managed in the same way. Thus, park managers should, as reflected in the draft policies, base management decisions on park specific information whenever possible. *See e.g.*, Draft § 4.1

Clearly, the short sentence referenced above is not enough to capture the complexity of managing the huge diversity of resources in the National Park System. Some units of the national park system can and do accept a heavy amount of visitor use, while others cannot sustain such use and must be more carefully managed to ensure their future viability. In addition, Congress has recognized these differences and when appropriate noted the need for recreation to be a dominant use in certain national park service units such as national trails, national recreation areas, gateway parks, national seashores, lakes shores, preserves.³ This management document must incorporate the policies inherent in all of these laws and balance their many objectives.

The National Park Service cannot allow itself to be held hostage to those who argue for minimal public access or to those who seek unfettered access to our parks. It is NMMA's view that this draft of the NPS management policies has achieved an important balance that will aid park managers' in pursuing a balanced resource management plan based on sound science for all types of units within the system. NMMA urges that the provisions providing this balance be retained in the final version.⁴ In particular, NMMA supports language in the introduction directing that "[t]he Park Service may balance resource conservation and visitor enjoyment in managing parks while ensuring that its management actions leave the resources and values unimpaired."⁵

¹ 16 U.S.C. § 1.

² 1 G. Coggins & R. Glicksman, *Public Natural Resources Law*, §6:29 at 6- 22-23 (West Oct. 2004).

³ *Id.*

⁴ *See e.g.*, Draft §§ 1.4.3 *et seq.*

⁵ Draft at 5-6; Draft § 8.1.1, & 8.1.2

NPS Managers Need Specific Guidance on Boating Safety and Navigation Matters

National Park Service unit managers are often called upon to devise management plans for boating activities. However, the proposed management policies do not include any specific guidance to managers on how to go about regulating these activities in the interest of both appropriate resource management and boating safety. NMMA urges the Service to add provisions to the Management Policies relating to visitor safety (§ 8.2.5.1) that require unit managers to consider boating safety when devising plans to regulate visitor or Service boating activities in the Park Service units. NMMA does not expect the capable Service managers to be experts in boating safety, which is why we strongly encourage the Service to consult with and defer to the expertise of the U.S. Coast Guard (USCG) and the relevant state boating law administrators when devising any management plan for boating activities. USCG personnel and state boating law administrators can be invaluable resources for Park System unit managers. They can spot potential boating safety hazards that may be inadvertently created by Service policies or management plans and can recommend safer alternatives.

In addition, unit managers and Washington headquarters have periodically developed plans, rules or policies specific to boating safety. Unfortunately, these efforts have often been in conflict with or duplicative of federal and state boating laws. It is NMMA's strongly held view that the USCG should be *the* authority on all federal boating safety regulations. Therefore, the NPS and its unit managers should defer to the USCG regulations when issuing any plan, rule or policy on boating. In addition, the NPS should in these cases adopt by reference the relevant USCG regulations to standardize boating safety regulations and to ensure that the USCG regulatory changes are automatically effective on NPS managed waters. In addition, National Park System unit managers should incorporate into their management documents the relevant state boating laws when appropriate. USCG rules and state boating laws should be adopted by reference in any Service plan, rule, or management practice for the following reasons:

- **Consistency** – USCG boating safety primacy and deference to relevant state boating laws would provide important consistency for boaters and would therefore improve compliance and reduce inadvertent violations. This is particularly important in open ocean/marine areas under NPS jurisdiction such as Biscayne National Park, Gateway National Recreational Area, Assateague Island National Seashore, Golden Gate National Recreational Area, Gulf Islands National Seashore, and the Channel Islands National Park where a boater may pass through multiple jurisdictions on one voyage.
- **Expertise** – One of the U.S. Coast Guard's primary missions is boating safety. The expertise that the USCG has gained from executing this primary mission puts it in a far superior position than the NPS to craft appropriate boating regulations. To fulfill its mission, the USCG has extensive interaction with the boating public, state boating law administrators, and is advised by the National Boating Safety Advisory Council. In contrast, boating safety is only one of the many visitor concerns that the Park Service must consider as the agency manages its public waters and lands. For these reasons, NMMA urges the NPS to defer to both the U.S. Coast Guard and the relevant state boating law administrator's expertise on all boater safety regulations.
- **Avoid Confusion** -- It is important to have only one federal agency as the nation's boating regulator rather than a dizzying array of confusing and conflicting regulations crafted by numerous federal agencies as a mere supplement to those agencies' core area

of responsibility. For example, the NPS in 2003 proposed its own rule requiring children 12 years of age or younger to wear a life jacket. The NPS rule differed in language to a current regulation already in place by the U.S. Coast Guard. Such duplication is completely unnecessary and counterproductive to boating safety.⁶ There is simply no compelling reason to confuse a boater with different boating regulations and terms. Such confusion can be easily avoided if the NPS defers to and incorporates the USCG regulations and applicable state boating laws.

- **Required by Law** – Most importantly, NPS deference to USCG law and regulations is required under 16 U.S.C. § 1a-2(h), which mandates that the NPS cannot promulgate any boating or water use regulation “in derogation of, the authority of the U.S. Coast Guard.” Since, USCG laws and regulations apply to “waters subject to the jurisdiction of the United States,” the NPS is required to defer to the USCG on NPS waters.⁷ The Management Policies should make National Park System unit managers aware of this statutory mandate.

In addition, to deferring to the experts on boating safety, the National Park Service also must consider when devising management plans the need for unobstructed navigation when specially designated waterways bisect Service units. Unit managers must inform themselves of the existence of these waterways and be familiar with the statutory requirements to allow for free navigation in these defined waters. For example, the Intracoastal Waterway (ICW) which extends from Boston to Key West was established to provide sheltered passage for all commercial and leisure boats in a narrow waterway several miles off the Atlantic coast. The U.S. Coast Guard has issued binding regulations specifying that a “clear channel shall at all times be left open to permit free and unobstructed navigation by all types of vessels and rafts that normally use the [ICW].” See 33 C.F.R. § 162.65(b) (2005). The NPS Management Policies should note the existence of such waters and specifically direct System unit managers to ensure that management plans, policies, or practices do not create obstructions to navigation. Such a policy would not only be consistent with the law, but also be in the interest of boating safety.

NPS Procedures and Policies Should Require the Use of Best Available Scientific Information

NMMA strongly supports the “best scientific information available” standard reflected throughout the draft management policies for NPS planning and decision-making procedures.⁸ Only through the use of sound science can the National Park Service unit managers choose the appropriate use of the unit and avoid those uses that will lead to unacceptable impacts. Thus, by applying sound science to its decisions, unit managers will ensure that park resources and values are strongly protected. In combination with the use of best available scientific information, the Service must also fully explain its management actions to visitors and the public. NMMA applauds the inclusion of language directing the NPS manager on how to make an impairment decision: “The responsible NPS manager must have followed a process including civic

⁶ *The National Park Service’s (NPS) proposed to revise rules that regulate boating and water use activities in areas administered by the NPS.* 68 Fed. Reg. 51,207 (Aug. 26, 2003); see 68 Fed. Reg. at 51,217 (proposed section § 3.7).

⁷ See e.g., 33 C.F.R. Part 175 (personal flotation device); 46 U.S.C. § 2302 (negligent or grossly negligent operation of a vessel); 33 C.F.R. Part 95 (operating a vessel under the influence). In addition, 16 U.S.C. § 1a-2(h), which provides NPS with its boating rulemaking authority refers to the U.S. Coast’s Guard’s authority to regulate the use of waters “subject to the jurisdiction of the United States.”

⁸ See e.g., Draft §§ 4.1.1, 4.1.3, & 8.1.2.

engagement as well as the use of the best available scientific, scholarly, and technical information, and be able to clearly articulate the reasoning applied in reaching a finding of impairment or non-impairment.” Draft § 1.4.5.

The lands and waters under Service management have been put aside for the recreational benefit of all citizens. NPS management policies need to recognize that boaters’ use of NPS waters, in small or large watercraft, can be accommodated with appropriate management policies that are based on sound science. Therefore, these management policies should focus on achieving an equitable balance between all the NPS water and land users while preserving these important resources. Such an equitable approach cannot be achieved without appropriate guidance to unit managers that directs the use of transparency, consistency, and the best available scientific information. For example, it would be inappropriate for a unit manager to prohibit vessels by horsepower or by vessel type without justifying the decision on the basis of sound science and providing transparency in the decision making process.

NPS Managers Should Seek to Mitigate Unacceptable Impacts First

NMMA supports the change reflected in draft section 8.1.2 (unacceptable impacts) directing resource managers, when they determine that a use is causing or would cause unacceptable impacts, to first seek to “manage the use in a way that will eliminate unacceptable impacts.” Only when necessary, as reflected in draft section 8.1.2., should a service manager restrict or disallow the activity. Far too often, the easy choice for a busy resource manager is to move to ban or severely restrict any activity that may cause an unacceptable impact on park resources. This approach is draconian and unfair to visitors and the local communities that surround park resources. A more balanced and less reactive approach is to devise a management plan with full public participation that uses additional management tools to eliminate the unacceptable impacts from the activity. It is important that any management decision to restrict or disallow an activity in a NPS unit have a reasonable basis and be based on best available science.⁹

Civic Engagement and Public Involvement Is Critical to Management Success

NMMA supports the NPS commitment shown the draft policies to reach out to all potential park users and those with socioeconomic ties to the parks to promote better understanding and respectful consideration of their viewpoints.¹⁰ In addition, NMMA supports the inclusion of a definition of the term “professional judgment” that requires superintendents to fully consider the relevant facts and take into account the results of a civic engagement and public involvement decision making process.¹¹ If NPS unit managers take this approach in their interactions with unit users and potential users, the Service will enjoy improved relationships and less contentious interactions with the public.

Current Routine Use of Anti-Foulants on Boats Should be Reflected in Policies

NMMA requests that an addition be made to the list of approved pesticides in park service system units to ensure that the NPS policies reflect the status quo. See Draft § 4.4.5.3. Boaters

⁹ Draft § 8.2.

¹⁰ See e.g., Draft §§ 1.4.5, 1.8, 8.2 & 2.1.3.

¹¹ Draft glossary at 5-6.

and NPS staff often use some form of anti-foulant paint on their hulls to discourage the growth of organisms. The use of anti-foulant paint by boaters is an important hull husbandry practice used to combat the spread of aquatic invasive species and should be recognized as an approved pesticide use similar to restroom disinfectants and personal insect repellants. In addition, it would be infeasible for park managers to require a pesticide use permit from any boater who travels in park waters. NMMA therefore recommends that the current practice be reflected in the management policies.

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In sum, NMMA recognizes the complexity of developing management policies that are appropriate for all units in the National Park System. The reliance on balance, sound science, and increased civic engagement and public involvement reflected in these draft management policies is commendable. NMMA urges the NPS to take seriously our recommendations to improve boating safety in the parks.

Like many national park and recreation area users, NMMA members appreciate these important resources and want our citizens to continue to enjoy recreational boating activities at NPS waters and lands in a safe and sensitive manner for many generations. NMMA appreciates the opportunity to provide these comments on the draft National Park Service management policies. Please contact NMMA's Regulatory Counsel, Cindy Squires at 202-737-9766 or csquires@nmma.org if you require any additional information or have any questions.

Sincerely,



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