



Personal Watercraft  
Industry Association

November 9, 2012

**VIA FAX AND CERTIFIED U.S. MAIL**

Superintendent  
ATTN: PWC Environmental Assessment  
P.O. Box 40  
Munising, MI 49862

Re: Comments on Scoping for National Park Service PWC Environmental  
Assessment, Pictured Rocks National Lakeshore, MI

Dear Superintendent Northup:

The Personal Watercraft Industry Association and its member companies Bombardier Recreational Products Inc. (BRP), Kawasaki Motor Motors Corp., and Yamaha (collectively, "PWIA") appreciate the opportunity to submit these comments in response to the National Park Service's ("NPS") October 2012 scoping notice for the Personal Watercraft Use Environmental Assessment ("EA") for Pictured Rocks National Lakeshore ("Pictured Rocks" or "the Park"). These comments supplement comments provided by Nicole Vasilaros on behalf of the PWIA at the recent public meetings on October 23 and 24, 2012. The PWIA's members are manufacturers and/or distributors of personal watercraft ("PWC"), and have unparalleled experience and institutional knowledge with respect to PWC.

The PWIA was founded in 1987 by the manufacturers of personal watercraft and is an advocate for safe and responsible PWC operation. The PWIA supports reasonable and fair regulations, strong enforcement of boating and navigation laws, and mandatory boating safety and education for all PWC operators. The PWIA is an affiliate organization of the National Marine Manufacturers Association ("NMMA"), the leading trade association representing the recreational boating industry in North America. There are 1.3 million registered PWC in the United States today, and only a tiny fraction of that number registered near and operated in the Pictured Rocks area in Michigan. The recent economic downturn in the U.S. economy has had a significant impact on the boating industry, with production and sales volume for PWC decreasing in the past several years. Recent economic trends have altered the nature and trajectory of the PWC market since the last EA. The overwhelming majority of PWC sold today are three-passenger models, making them affordable and family-friendly vessels to experience and enjoy the outdoors at Pictured Rocks and elsewhere.

The PWIA commends and supports NPS in its undertaking this process under the National Environmental Policy Act ("NEPA"). NPS' scoping notice states that action is needed "at this time to address the inadequacies in the previous Environmental Assessment for PWC use at the park, as identified in the 2010 U.S. District Court opinion." In fulfilling this task, it is important to note at the outset that the Court did not make affirmative findings contrary to the NPS' substantive

November 9, 2012

Page 2

conclusions in the prior EA or the final rule for Pictured Rocks, but rather questioned, under NEPA and its implementing regulations, the procedures and metrics utilized for presenting impacts in the prior EA. The PWIA looks forward to working with the agency and other stakeholders to rectify these perceived procedural shortcomings during this process, including offering the PWIA's access to current PWC studies and data to inform NPS' review. The PWIA believes that this renewed process will produce a well-supported environmental analysis and rule reflecting the compatibility of PWC and other uses at Pictured Rocks.

For present scoping purposes, the PWIA respectfully requests that NPS consider the following specific comments in developing the draft EA. The PWIA looks forward to contributing and commenting further as the EA process continues.

**A. The EA Should Utilize Current, High-Quality, and Accurate Information.**

The prior EA was published in 2002, and the Finding of No Significant Impact ("FONSI") and final rule for PWC use at Pictured Rocks were issued in 2005. Since that time, NPS has the benefit of over seven years of PWC use in the Park. During that time there have also been developments in the law and in industry technology. This passage of time offers the opportunity to incorporate new PWC data and examine their relative expected impacts at the Park.

To the greatest extent practicable, the EA should proceed on the basis of concrete data and experience rather than generalizations, hypotheticals, anecdotes, or public perception. Under Council on Environmental Quality ("CEQ") regulations, NPS must use best available scientific information. 40 C.F.R. §§ 1500.1(b), 1502.22. The prior EA from 2002 had to project the numbers and effects of PWC once reintroduced to the Park, typically for a 10-year period ending in 2012, and the Court took issue with how the agency arrived at some of those projections. With 2012 nearly over, NPS can now rely on more reliable actual data in lieu of projections, and the EA should present an analysis of any actually measureable incremental effects attributable to PWC since PWC were reintroduced to the Park. NPS may draw from its actual experience during the period when PWC were initially used (early 1990s to 2002), when PWC were banned (2002 to 2005), and when PWC were reintroduced (2005 to present), and compare those findings to its original estimates. If the actual data closely aligns to projections, that will bolster NPS' original findings and earn greater deference to the forthcoming EA. Grounds for a FONSI similarly would be strengthened if effects did not change significantly upon reintroduction of PWC in 2005. If the projected and actual findings are different, that also will allow NPS to adjust its analysis accordingly. Moreover, if the existing 2005 rule is preserved, direct and indirect impacts regarding increased PWC use should be muted in the EA considering that PWC have already been operating in the Park for several years under that rule.

Thus, for scoping purposes, NPS should collect and consider data from the several recent years of PWC use at the Park, including any actually observed air, water, sound, and biological impacts directly attributable to PWC; currently observed or measured discharges from PWC and

other boats; actual visitor experiences of PWC and non-PWC Park users; numbers and models of PWC; origins and usage trends for PWC at the Park; and other relevant topics. If NPS has not already gathered such information since passage of the Pictured Rocks PWC rule, NPS should take the time now to collect such data and test its prior findings.

In addition, NPS should obtain and give greater weight to the views of local citizens who regularly visit Pictured Rocks. There are many longtime area residents who can offer valuable perspectives on the effects of PWC use. These views based on actual experience are more credible than statements by national groups predisposed to a blanket ban on PWC use anywhere in the country (and which the Court found had not visited Pictured Rocks or met standing requirements for their claims beyond NEPA).

**B. NPS Should Consider the Significance of PWC Impacts Holistically and in Furtherance of Consistent Park Management.**

The EA should assess any impacts from PWC not in a vacuum, but through a holistic and practical approach incorporating existing conditions and uses throughout the Park. Motorized boating has a long history at the Park since its inception in 1966. Park uses have included PWC since the early 1990s. It is well-established that PWC make up a very small fraction of total boating in Pictured Rocks, and an even smaller percentage of total users. Based on information conveyed at the recent public meetings, only 75 total PWC were observed during the entire 2012 season (late May through mid-October). Park uses have diversified over time, particularly in frontcountry areas where PWC are present. These largely family-oriented activities include, but are not limited to, swimming, non-motorized boating, and PWC use. Other motorized boat uses include commercial cruises carrying several passengers.

While the PWIA understands that this EA is focused on PWC use at Pictured Rocks, the prevalence of motorized boating and other existing uses is highly relevant in providing the proper context to assess both the baseline conditions and the likely effects of PWC on the environment and visitors' expectations. The issue is not introduction of PWC into an area comprised entirely of "pristine" wilderness, as that term was used by the Court, but rather the aggregation of PWC with existing and diverse high recreational usage at the Park. As NPS has stated in Section 1.4.7 of its 2006 Park Management Policies, "[v]irtually every form of human activity that takes place within a park has some degree of effect on park resources or values, but that does not mean the impact is unacceptable or that a particular use must be disallowed." The "Purpose and Need" stated in the scoping notice also recognizes that the Park should be managed by "offering a variety of visitor experiences." The PWIA fully recognizes and supports the protected resources and values at Pictured Rocks. But this does not mean that continued PWC use will significantly affect the environment or foreclose other Park uses. Indeed, the Park is open to all people, and not every deviation from a natural state, every additional user, or every individually perceived annoyance is a significant impact.

Accordingly, the EA should explain in detail the full range of uses at the Park and where within the Park those uses take place, illustrating upfront that the entirety of the Park is not predominated by passive uses incompatible with PWC. Likewise, in formulating PWC alternatives and mitigation measures, the EA should consider the actual utility of certain PWC restrictions if motorized boats of greater size and in greater numbers may operate in those same areas. In the same vein, since NPS has indicated its desire to minimize operational costs, NPS should create a scheme utilizing consistent standards for similar activities. Relatedly, the analysis of cumulative impacts of PWC use should account for the PWC share of overall recreational use at the Park. When viewed in their proper context, NPS may again find that the effects of PWC at Pictured Rocks are insignificant under NEPA.

**C. The Areas Open to PWC Should Be Maintained or Expanded Consistent with Other Park Uses.**

The scoping notice lists three basic “preliminary alternative concepts”: continue the existing rule, prohibit all PWC use, or allow PWC use along the full length of the park. The PWIA favors the third alternative, and at the very least the first alternative. Operation of PWC should be regulated consistently with other motorized vessels operating throughout the Park. The several years of PWC use from the Park’s western boundary to Miners Beach demonstrate the absence of significant effects on the environment, and the PWIA perceives no legitimate documented reason to further restrict PWC use in that area. In fact, innovations in PWC technology and legal developments discussed below have lowered, and will continue to lower, the potential for adverse impacts. For example, with regard to visitor safety, PWC accidents are on the decline. *See, e.g., U.S. Coast Guard Recreational Boating Statistics 2011*, at 48 (available at [http://www.uscgboating.org/assets/1/workflow\\_staging/Publications/557.PDF](http://www.uscgboating.org/assets/1/workflow_staging/Publications/557.PDF)). PWC safety is advanced by additional equipment safeguards and mandatory age and education programs. Indeed, at the scoping public meetings, it was reported that PWC were used to *rescue* kayakers in the Park this past summer. With regard to any local complaints against PWC use, NPS should investigate and collect actual data to factor into its analysis.

The PWIA also supports expansion of the shoreline area for PWC use. The PWIA recognizes that certain segments are more controversial than others, such as adjacent to the Beaver Basin Wilderness. However, PWC use along other portions of the shoreline likely would not impact the areas identified as most sensitive. For instance, the far eastern stretch of shoreline from Grand Murais to Au Sable Light Station would not appear to impact areas of note, and should be considered for PWC use. The recently paved H-58 road running from Munising to Grand Murais, providing increased access to a boat ramp at the eastern end of the Park, constitutes another factor supporting increased PWC access. Due to improved fuel economy, technological advances, and safe operator behavior, PWC users express consistent interest in long and unique scenic tours along Pictured Rocks’ forty-two mile shoreline, akin to experiences presently offered by cruise boats and other services without significant effects on other Park values.

**D. NPS Should Recognize and Incorporate Existing Standards.**

Other laws and standards guide PWC use at Pictured Rocks beyond NPS' PWC use rule, some of which have been enacted or updated since the time of the prior EA study. These additional standards should substantially alleviate the Court's concerns and obviate additional restrictions in the PWC rule for Pictured Rocks.

Michigan state law imposes strict standards on PWC use and safety in Michigan waters, including in Lake Superior. These requirements include prohibitions on PWC operation between sunset and 8:00 a.m., in waters less than two feet deep, and in a manner that disturbs vegetation. PWC users must also comply with a 200-foot buffer zone from the shoreline, a 150-foot buffer zone for crossing behind other non-PWC vessels unless at "slow, no wake speed," restrictions on speed and wake-jumping, age limitations (age 16 to operate an owned PWC alone), life-jacket requirements, and other restrictions. Violators are subject to fines and temporary prohibitions on their PWC use in the Park. Mich. Comp. Laws § 324.80201-80222.

In 2007, NPS promulgated its final rule on "Boating and Water Use Activities." 72 Fed. Reg. 13694 (Mar. 23, 2007), codified at 36 C.F.R. § 3.1 *et seq.* These rules set out additional nationwide standards applicable to PWC and other boats, addressing, among other things, safety and noise concerns. They also incorporate non-conflicting state laws and regulations, thereby promoting a system of consistent rules to facilitate understanding and compliance. *See* 36 C.F.R. § 3.2(b). Regarding noise, NPS adopted prescribed sound decibel levels and testing standards from the National Association of State Boating Law Administrators ("NASBLA") Model Act for Motorboat Noise and NMMA (which includes the PWIA) Model Act. The NPS rule limits PWC and other boats to "(1) 75dB(A) measured utilizing test procedures applicable to vessels underway (Society of Automotive Engineers SAE--J1970); or (2) 88dB(A) measured utilizing test procedures applicable to stationary vessels (Society of Automotive Engineers SAE--J2005)." Notably, these noise thresholds are below the decibel levels assessed in the Court's opinion. The Court further noted, but did not accord any importance to, the reduction in decibel levels when utilizing a 200-foot buffer zone.

The PWIA's member companies have not only met, but exceeded, these noise requirements by complying with another sound emission standard, ISO 14509. The ISO 14509 limitation is 75dB, measured 75 feet from shore, at a test speed of 40 miles per hour. ISO 14509 is effectually different from SAE-J1970, which sets a 75dB recommended practice during shoreline testing at wide open throttle with no distance measurement. All PWIA member manufacturers meet the ISO 14509 noise standard. Advances in PWC hull design technology include the following features to achieve reduced sound emissions: engine mount isolation, quieter four-stroke technology engines, advanced water jacketing, water lock boxes/mufflers, and exhaust exits at the air/water interface.

With respect to air emissions, the Environmental Protection Agency regulates emissions from PWC and other marine outboard engines under the same regulation. 40 C.F.R. Part 1045. EPA promulgated its most recent emissions standard in 2008, applicable to PWC model year 2010 and beyond. PWC are also subject to EPA evaporative emission standards at 40 C.F.R. Part 1060, most recently promulgated in 2009. Since 1998, PWC have achieved a 75% reduction in hydrocarbon and nitrogen oxide emissions. Today, PWC emit 16 gr/KW-hr of hydrocarbon and nitrogen oxides, compared to 300gr/KW-hr prior to 1998. All PWC manufacturers also meet the California Air Resource Board (“CARB”) PWC emission requirements. With the implementation of the EPA final rule in 2010, both CARB and EPA emission standards are harmonized. At this time all new PWC engines are certified to meet both CARB Three Star and EPA 2010 standards, making them some of the cleanest engines on the water today.

Finally, NASBLA has promulgated additional model acts that may serve as useful references for standards in conducting the EA study.

**E. NPS Should Not Enact Additional Unnecessary Restrictions on PWC Use.**

Given the overlapping regime of applicable laws and standards to protect various resources and values at Pictured Rocks, and in the absence of evidence showing significant environmental harm to the Park due to PWC use, it is unnecessary to impose additional restrictions on PWC use beyond those in the current rule. For example, a categorical distinction between two-stroke and four-stroke engines as suggested in NPS’ scoping notice would not be optimal because certain two-stroke engines (direct injection, as opposed to carbureted) offer noise levels and improved emission standards comparable to four-stroke engines. To the extent NPS elects to carry certain measures into more detailed alternatives or mitigation analysis in the EA, NPS should not select such measures unless the restrictions are fully explained and the purported benefits are supported by credible evidence. Indeed, the Court did not appear to comprehend the source or marginal utility between the selected alternative and the expanded use alternative in the prior EA, particularly since both options were described as having nearly indistinguishable impacts on several Park resources. In the forthcoming EA, NPS need not present a greater number of alternatives or adopt greater wholesale restrictions, but should better explain the sources and basis for the alternatives studied.

**F. Socioeconomic Impacts Must Be Fully Considered.**

As in its prior EA, NPS should properly consider the economic and social impacts interrelated with its environmental analysis. 40 C.F.R. § 1508.14. While the Court did not take issue with NPS’ prior analysis of these types of effects, NPS should ensure that its draft EA considers not only the effects of PWC use on the local population and economy, but also the socioeconomic effects of further restricting PWC use.

November 9, 2012

Page 7

On one hand, NPS should consider any increased visitation to the Park and corresponding economic benefits to the Park and surrounding area if NPS preserves or expands PWC use. On the other hand, NPS should not enact new restrictions without considering their local impacts. The Court noted the concern of PWC users driving other users out of the Park, but did not acknowledge the fact that restricting or banning PWC would have the same effect on PWC users. At Pictured Rocks, most PWC are based and used locally, rather than rented or transported from distant locations. Thus, imposition of new technology-based or other limitations could have the effect of excluding local users.

### **G. Conclusion**

Thank you for the opportunity to provide these NEPA scoping comments regarding continued use of PWC at Pictured Rocks. The PWIA and its members appreciate NPS' careful consideration of these views, and support this important project. The PWIA believes that an objective reevaluation of the relevant issues in the EA to address the Court's procedural questions will support maintaining PWC among the wide range of appropriate recreational opportunities that are consistent with environmental protection and visitor enjoyment at the Park.

If you have any questions or require further information, contact Nicole Vasilaros at 202-737-9763 or at [nvasilaros@nmma.org](mailto:nvasilaros@nmma.org), or Cindy Squires at 202-737-9766 or at [csquires@nmma.org](mailto:csquires@nmma.org).

Sincerely,

A handwritten signature in cursive script that reads "David Dickerson".

David Dickerson  
PWIA Executive Director

Document comparison by Workshare Compare on Friday, November 09, 2012  
9:10:14 AM

<b>Input:</b>	
Document 1 ID	file://C:/Users/jns/Desktop/Orig NMMA_PWIA Scoping Comments on PIRO PWC EA FINAL.docx
Description	Orig NMMA_PWIA Scoping Comments on PIRO PWC EA FINAL
Document 2 ID	file://C:\Users\jns\Desktop\New 2012-11-09 NMMA_PWIA Scoping Comments on PIRO PWC EA FINAL.docx
Description	New 2012-11-09 NMMA_PWIA Scoping Comments on PIRO PWC EA FINAL
Rendering set	Standard

<b>Legend:</b>	
<a href="#">Insertion</a>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics:</b>	
	Count
Insertions	20
Deletions	12
Moved from	0
Moved to	0
Style change	0
Format changed	0
<b>Total changes</b>	<b>32</b>