

BILLING CODE 4312-ED

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024-AD50

Special Regulations; Areas of the National Park System

AGENCY: National Park Service, Interior

ACTION: Proposed Rule

SUMMARY: The National Park Service is proposing this rule to update its regulations for managing use of the Colorado River and adjoining federally owned lands administered by the National Park Service within Grand Canyon National Park. Changes to the current rule are necessary to implement portions of the park's recently revised Colorado River Management Plan. Current regulations govern boat trips on the Colorado River within the park upstream from Diamond Creek (approximately River Mile 226). In accordance with the new Colorado River Management Plan, the proposed rule will apply to the entire Colorado River within the park, including the reach of the river downstream from Diamond Creek to the boundary between the park and Lake Mead National Recreation Area (approximately River Mile 277).

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit your comments, identified by Regulatory Information Number 1024-AD50 (RIN), by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: National Park Service, WASO, Mike Archer, Chief Ranger, Grand Canyon National Park, P.O. Box 129, Grand Canyon, Arizona

All submissions received must include the agency name and RIN. For additional information see “Public Participation” under SUPPLEMENTARY INFORMATION below.

FOR FURTHER INFORMATION CONTACT: Palma Wilson, Deputy Superintendent - Operations, Grand Canyon National Park, P.O. Box 129, Grand Canyon, Arizona 86023, Palma_Wilson@nps.gov, (fax) (928) 638-7815.

SUPPLEMENTARY INFORMATION:

Description of the Park

Grand Canyon National Park, Arizona, contains and protects what many people consider to be the most scenic and scientifically significant arid-land canyon in the world. Congress established the park in the Act of February 26, 1919, and enlarged its boundaries in subsequent legislation enacted in 1926, 1928, and 1975. As described in the latest such enactment, the Grand Canyon National Park Enlargement Act, the park consists of approximately one million, two hundred thousand acres of lands, waters, and interests therein, all as depicted on a boundary map referenced in the legislation.

The reach of the Colorado River in the park provides a unique combination of thrilling whitewater adventure and magnificent vistas of a remarkable geologic landscape, including remote and intimate side canyons. The 277-mile-long river corridor

is home to unique and abundant natural and cultural resources, including diverse wildlife, threatened and endangered species, archeological sites, caves, and natural soundscapes. For these reasons, a river trip through the Grand Canyon is one of the most sought-after backcountry experiences in the country, and nearly 30,000 visitors per year run the river. In addition, more than 50,000 visitors per year take flat-water excursions lasting several hours in the lower gorge on pontoon boats operated by or for the Hualapai Tribe.

Purposes of the Park

In the Act of February 26, 1919, Congress dedicated and set apart certain described lands under the name of the Grand Canyon National Park “as a public park for the benefit and enjoyment of the people.” In the Grand Canyon National Park Enlargement Act, Congress recognized “that the entire Grand Canyon, from the mouth of the Paria River to the Grand Wash Cliffs, including tributary side canyons and surrounding plateaus, is a natural feature of national and international significance.” In that act Congress also recognized the need for “further protection and interpretation of the Grand Canyon in accordance with its true significance.”

The park’s General Management Plan, finalized in 1995, states that as a place of national and global importance Grand Canyon National Park is to be managed to “preserve and protect its natural and cultural resources and ecological processes, as well as its scenic, aesthetic, and scientific values” and to “provide opportunities for visitors to experience and understand the environmental interrelationships, resources, and values of Grand Canyon without impairing the resource.”

The park's Colorado River Management Plan was revised (Record of Decision published in the Federal Register on March 23, 2006) to address both long-standing and recent issues concerning resource protection, visitor experience, and public services along the Colorado River corridor; to consider the impact of National Park Service river management on federally recognized American Indian tribes whose reservations adjoin Grand Canyon National Park; and to fulfill the requirements of a 2002 agreement that settled litigation over the previous river management plan.

Resource Issues

Nearly 30,000 visitors per year participate in commercial or noncommercial river trips on the Colorado River within Grand Canyon National Park. In addition, more than 50,000 visitors per year take flat-water excursions lasting several hours in the lower gorge on pontoon boats operated by or for the Hualapai Tribe. Recreational activities along the river corridor in the park may impact the park's natural and cultural resources (including resources possessing wilderness values), the experiences of park visitors, park operations, and adjoining lands owned or administered by other federal agencies or neighboring American Indian tribes. Those impacts are analyzed in depth in Chapter 4 of the Final Environmental Impact Statement for the recently revised Colorado River Management Plan.

As currently written, 36 CFR 7.4(b) governs the use of the Colorado River within the park upstream from Diamond Creek (approximately River Mile 226). This proposed rule would apply to the entire Colorado River and adjoining federally owned lands within the park, including the reach of the river downstream from Diamond Creek (River Mile

226) to the boundary between the park and Lake Mead National Recreation Area (approximately River Mile 277). This proposed rule (1) would clarify that commercial river trips below Diamond Creek, including those operated by or for the Hualapai Tribe, must obtain National Park Service approval in the form of a permit, contract, or other written agreement, as required by 36 CFR 5.3 and other applicable laws, and (2) would require that noncommercial river trips using any part of the Colorado River within Grand Canyon National Park, including the river downstream from Diamond Creek, obtain a permit issued by the Superintendent. The proposed rule also would update visitor-use restrictions and camping closures and delete unnecessary provisions in the current regulation.

The Colorado River Management Plan planning process involved extensive public scoping beginning in 1997 and included numerous public meetings and stakeholder workshops; opportunity for the public to comment in person or via email or regular mail; and consultation with other agencies and culturally affiliated American Indian tribes. During the planning process, approximately 2,000 people attended public meetings, and the National Park Service received approximately 24,000 written responses from the public containing over 90,000 individual comments. For additional information see the *Purpose of and Need for the Action, Background Information* and *Appendix B: Public Scoping Summary* sections of the Final Environmental Impact Statement, which detail the public scoping process and the issues and concerns raised in scoping; Volume II, Chapter 5 of the Final Environmental Impact Statement, which includes a list of organizations and agencies consulted during the planning process; and Volume III of the Final Environmental Impact Statement, which includes responses to all substantive

comments received during the process. The Final Environmental Impact Statement can be found on the park's website at <http://www.nps.gov/archive/grca/crmp/> or at Grand Canyon National Park, 823 N. San Francisco, Ste A, Flagstaff, AZ 86001.

The National Park Service's management of the Colorado River within Grand Canyon National Park may affect resources of the Navajo Nation, the Havasupai Tribe, or the Hualapai Tribe, each of which shares a boundary with the park. Furthermore, the National Park Service's management of the Colorado River within the park will affect businesses operating on the river under agreements with the Hualapai Tribe. Potential impacts for culturally affiliated American Indian tribes were addressed in the park's recently revised Colorado River Management Plan.

At its request, the Hualapai Tribe served as a cooperating agency in the preparation of the Environmental Impact Statement for the new Colorado River Management Plan. The final plan represents agreement between the National Park Service and the Tribe on most issues relating to river use in the park. However, the Tribe's preferred alternative for the lower gorge envisioned even greater pontoon boat use than the increase authorized by the final plan. The National Park Service intends to offer the Tribe a non-competitive concession contract for its lower gorge operations in accordance with the final plan and with the National Park Service Concessions Management Improvement Act of 1998 and implementing regulations found in 36 CFR Part 51.

For more information on consultation and coordination with American Indian tribes see Chapter 5 of the Final Environmental Impact Statement for the Colorado River Management Plan. The Final Environmental Impact Statement can be found on the

park's website at <http://www.nps.gov/archive/grca/crmp/> or at Grand Canyon National Park, 823 N. San Francisco, Ste A, Flagstaff, AZ 86001.

The Draft and Final Environmental Impact Statements

This rule would implement portions of Grand Canyon National Park's recently revised Colorado River Management Plan. The National Park Service prepared a Draft Environmental Impact Statement and a Final Environmental Impact Statement. A Record of Decision was published in the Federal Register on March 23, 2006. The planning process began in 1997 with public scoping and stakeholder workshops. During the process, approximately 2,000 people attended a total of 14 public meetings and the NPS received approximately 24,000 written responses from the public containing over 90,000 individual comments. Impacts associated with this rule are analyzed in the Final Environmental Impact Statement for the Colorado River Management Plan. The Record of Decision and the Final Environmental Impact Statement are available on the park's website at <http://www.nps.gov/archive/grca/crmp/> or at Grand Canyon National Park, 823 N. San Francisco, Ste A, Flagstaff, AZ 86001.

Section-by-Section Analysis

§ 7.4(b) Colorado River boat trips.

Section 7.4(b), "*Colorado River boat trips*" would amend the existing regulation, which applies to boat trips on the Colorado River only between Lee's Ferry (River Mile 0) and Diamond Creek (approximately River Mile 226). The amended section would

apply to all boat trips on the entire length of the Colorado River in Grand Canyon National Park.

Section 7.4(b)(1) would clarify that all commercial boat trips on the Colorado River in Grand Canyon National Park must be authorized by the National Park Service through a permit, contract, or other written agreement, as required by 36 CFR § 5.3 and other applicable laws.

Section 7.4(b)(2) would require all noncommercial river trips on the entire length of the Colorado River in Grand Canyon National Park to be authorized under a permit issued by the Superintendent. Currently section 7.4 only requires permits for noncommercial river trips from Lee's Ferry (River Mile 0) to Diamond Creek (approximately River Mile 226). This section would extend the permit requirement to the entire river within the park.

Section 7.4(b)(3) would renumber and clarify the definition of "commercial" river trips and "noncommercial" river trips. This section is currently found at 7.4(b)(3)(iii).

Section 7.4(b)(4) would create a new standalone section with language that is currently found in section 7.4 (b)(3) and that authorizes the Superintendent to limit the number of permits, contracts and other written agreements, or amend the terms and conditions of those permits, contracts and other written agreements, to ensure public safety or to protect park resources.

Section 7.4(b)(5)(i),(ii),(iii), and (iv) would set out operational conditions required for all river trips. These conditions are not new except that they would apply to the entire length of the Colorado River within the park. These four conditions are currently found in sections 7.4(b)(1) and (2).

Section 7.4(b)(6) would renumber the section that requires human waste to be removed from the park in a manner prescribed by the Superintendent. This section is currently found at 7.4(b)(4).

Section 7.4(b)(7) would renumber and update the section that contains requirements for camp fires currently found at 7.4(b)(4). This section would continue to require that fires be kindled only on beaches and that fires be completely extinguished with water. It would add the requirements that fires must be kindled in elevated metal pans and that ash and charcoal must be removed from the park. These restrictions are currently included in permit conditions for both commercial and noncommercial river trips.

Section 7.4(b)(8)(i) through (vii) would list camping closures that are currently found at 7.4(b)(9) and would add camping closures in the following areas: the Phantom Ranch area, on the banks of the Colorado River between the Black Bridge and 0.25 miles below the mouth of Pipe Creek; the Elves Chasm drainage from Royal Arch to the Colorado River; and the Deer Creek drainage from Deer Creek Falls to the Colorado River. Section 7.4(b)(8)(vi) would clarify that the camping closure at the mouth of Havasu Creek includes the Havasu Creek drainage from the boundary between the park and the Havasupai Indian reservation to the Colorado River. These areas are heavily visited by river trips and the closures would protect resources in the areas by limiting river trip participants to day-use only.

The revision of section 7.4(b) would remove sections 7.4(b)(5), (b)(7), and (b)(8). Current section 7.4(b)(5) prohibits pets on river trips. Pets are prohibited in all areas below the rim of the Grand Canyon, including the Colorado River corridor, by the

Superintendent under the authority granted in 36 CFR § 2.15(a)(1), making the current section 7.4(b)(5) unnecessary.

Current section 7.4(b)(7) allows picnicking on beach areas along the Colorado River. This use is currently authorized by 36 CFR § 2.11, making the current section 7.4(b)(7) unnecessary.

Current section 7.4(b)(8) allows swimming and bathing in the waters of the Colorado River except in locations immediately above rapids, eddies and riffles or near rough water. Removing this section would allow swimming and bathing in all areas of the Colorado River, as authorized by 36 CFR § 3.16. The National Park Service expects swimmers and bathers to take responsibility for their own safety and exercise good judgment while using the waters of the Colorado River.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866. We have made the assessments required by E.O. 12866 and the results are available by writing to the address in the addresses section or as supporting material to this rulemaking found at <http://www.regulations.gov>.

(1) This rule would not have an effect of \$100 million or more on the economy.

It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or local, governments or communities. However, it may affect the Hualapai Tribal

economy in the future by capping the number of people who may take flat water excursions in the lower gorge operated by or for the Hualapai Tribe.

- (2) This rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.
- (3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.
- (4) OMB has determined that this rule raises novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this document would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. §§ 601-12 (2000)).

A qualitative regulatory flexibility analysis was published on January 11, 2008, using data from a cost-benefit analysis prepared for the river management plan. The analysis showed a net benefit of \$2.9 million to the regional economy and an increase of 47 jobs for the area above Diamond Creek. For the area on the Colorado River below Diamond Creek the result was a predicted major beneficial economic impact on Hualapai tribal revenue, and a negligible impact on the regional economy.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. subsection 804(2) of the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million or more.

- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. Except as described elsewhere with respect to the Hualapai Tribe, the rule does not have a significant or unique effect on State, local or tribal governments or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, this rule does not have significant takings implications.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform (Executive Order 12988)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the executive order.

Paperwork Reduction Act

This regulation does not require information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I is not required.

National Environmental Policy Act

This rule would implement portions of the recently revised Colorado River Management Plan. All impacts associated with this rule are fully analyzed in the Final Environmental Impact Statement for the Colorado River Management Plan. The Final Environmental Impact Statement is available on the park's website at <http://www.nps.gov/archive/grca/crmp/> or at Grand Canyon National Park, 823 N. San Francisco, Ste A, Flagstaff, AZ 86001.

Government-to-Government Relationship with Tribes

The National Park Service's management of the Colorado River within Grand Canyon National Park may affect the resources of the Navajo Nation, the Havasupai Tribe, and the Hualapai Tribe, each of which shares a boundary with the park, and historic properties in the park to which those and other tribes might attach religious and cultural significance. Therefore, in accordance with the provisions of the National Environmental Policy Act ; the National Historic Preservation Act; the April 29, 1994, Presidential Memorandum on Government-to-Government Relations with Native American Tribal Governments; Executive Order 13007, 3 CFR 196 (1997); Executive Order 13175, 3 CFR 304 (2001); 512 Department of Interior Manual 2; National Park Service Management Policies 2001 and 2006; and National Park Service Director's Order #71: Relationship with Indian Tribes, the National Park Service established regular

consultation with culturally affiliated, federally recognized American Indian tribes during the revision of the Colorado River Management Plan to try to understand and address tribal issues and concerns. For a list of American Indian tribes consulted and a description of the process and issues identified during the process, see Chapter 5 of the Final Environmental Impact Statement for the Colorado River Management Plan. The Final Environmental Impact Statement can be found on the park's website at <http://www.nps.gov/archive/grca/crmp/> or at Grand Canyon National Park, 823 N. San Francisco, Ste A, Flagstaff, AZ 86001.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example § **7.XX**)

(5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229,

1849 C Street, NW, Washington, DC 20240. You may also email the comments to this address: Exsec@ios.doi.gov.

Drafting Information: The principal contributors to this proposed rule are: Chris Pergiel, Alaska Regional Chief Ranger; Robin Martin, Program Analyst, Grand Canyon National Park; and Jerry Case, Superintendent, Bighorn Canyon National Recreation Area.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 36 CFR part 7

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721 (1981).

2. In § 7.4, paragraph (b) is revised as follows:

§ 7.4 Grand Canyon National Park

* * * * *

(b) *Colorado River boat trips.* The following applies to all persons using the waters of the Colorado River, or federally owned lands administered by the National Park Service along the river, within Grand Canyon National Park:

(1) Commercial use of the Colorado River within Grand Canyon National Park must be authorized by the National Park Service through a permit, contract, or other written agreement. Each commercial river trip must designate a trip leader who is responsible for ensuring that all trip participants comply with the terms and conditions of the authorizing instrument.

(2) Noncommercial use of the Colorado River within Grand Canyon National Park, including research by any agency, entity, or person except the National Park Service, must be authorized by a permit issued by the Superintendent. The permit holder is deemed to be the trip leader and is responsible for ensuring that all trip participants comply with the terms and conditions of the permit.

(3) A river trip is commercial if any participant receives money or other compensation for organizing, outfitting, or guiding the trip. A river trip is noncommercial if:

- (i) There is a bona fide sharing of expenses among trip participants; and
- (ii) No participant receives any money or other compensation for organizing, outfitting, or guiding the trip.

(4) At any time the Superintendent may limit the number of permits, contracts, and other written agreements issued or may amend the terms and conditions of those

permits, contracts, and other written agreements to ensure public safety or to protect park resources.

(5) From Lees Ferry (River Mile 0) to Separation Canyon (approximately River Mile 239.5):

(i) No one may operate a vessel engaging in predominately upstream travel;

(ii) No one may operate a vessel powered by a motor or motors whose total horsepower exceeds 55;

(iii) Every person aboard a vessel must wear a personal floatation device approved by the United States Coast Guard for the specific activity in which the person is engaged; and

(iv) One additional personal floatation device must be carried on each vessel for every ten persons on board.

(6) All solid human waste must be removed from the park and disposed of in the manner prescribed by the Superintendent.

(7) Fire may be kindled only on beaches in an elevated metal fire pan that contains the fire. All fires must be completely extinguished with water before the river trip participants leave the area. All ash and charcoal must be removed from the park.

(8) The following areas are closed to camping:

(i) The banks of the Colorado River from the mouth of the Paria River to Navajo Bridge;

(ii) Red Wall Cavern;

(iii) The banks of the Colorado River from the Black Bridge to 0.25 miles below the mouth of Pipe Creek;

(iv) The Elves Chasm drainage from Royal Arch to the Colorado River;
(v) The Deer Creek drainage from Deer Creek Falls to the Colorado River;
(vi) The Havasu Creek drainage from the boundary between the park and the Havasupai Indian reservation to the Colorado River; and

(vii) Any other areas closed to camping by the Superintendent.

(9) The Superintendent may temporarily limit, restrict, or terminate access to or use of areas after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

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Will Shafroth
Acting Assistant Secretary, Fish and Wildlife and Parks

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