

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: December 19, 2007

Division: Growth Management

Bulk Item: Yes No

Department: Planning & Environmental Resources

Staff Contact: Richard Jones

AGENDA ITEM WORDING:

Presentation by the American Watercraft Association regarding boating rights in Biscayne National Park (Park), and a request for the Board to provide a letter to the Superintendent of the Park to open the Intracoastal Waterway (ICW) to all registered vessels.

ITEM BACKGROUND:

Personal Water Craft (PWC) are currently prohibited from using the ICW through Biscayne Bay by the Park. At its August 7, 2007 meeting the Marine and Port Advisory Committee (Committee) heard a presentation by Peggy Mathews representing the American Watercraft Association regarding the Park ban on PWC operation along the ICW. The Committee reviewed numerous letters from citizens and agencies and approved a recommendation to the Board (6-4) to send a request to the Park to allow the use of the ICW to all registered vessels, including PWC.

PREVIOUS RELEVANT BOCC ACTION:

N/A

CONTRACT/AGREEMENT CHANGES:

N/A

STAFF RECOMMENDATIONS:

Approval

TOTAL COST: N/A

BUDGETED: Yes No

COST TO COUNTY: N/A

SOURCE OF FUNDS: _____

REVENUE PRODUCING: Yes No

AMOUNT PER MONTH _____ **Year** _____

APPROVED BY: County Atty OMB/Purchasing Risk Management

DOCUMENTATION: Included Not Required

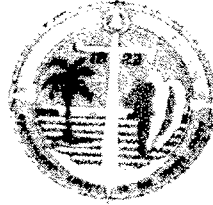
DISPOSITION: _____

AGENDA ITEM # _____

County of Monroe
Growth Management Division

Marine Resources Office

Suite #420
2798 Overseas Highway
Marathon FL 33050
Voice: (305) 289-2805
FAX: (305) 289-2536



Board of County Commissioners

Mayor Charles "Sonny" McCoy, Dist. 3
Mayor Pro Tem Mario DiGennaro, Dist. 4
George Neugent, Dist. 2
Dixie Spehar, Dist. 1
Sylvia J. Murphy, Dist. 5

We strive to be caring, professional and fair

DATE: December 4, 2007
TO: County Administrator and County Commissioners
FROM: Richard Jones
SUBJECT: Navigational rights in Biscayne National Park

Staff was recently approached by Peggy Mathews, representing the American Watercraft Association, regarding navigational rights in Biscayne National Park (Park). Ms. Mathews is contacting the counties adjacent to the Park to make them aware of a perceived issue regarding the Park exceeding its authority by not allowing certain vessels (i.e. Personal Watercraft) to traverse Park waters via the Intracoastal Waterway (ICW).

Staff is concerned that prohibiting the use of the ICW for a specific type of vessel infringes on navigational rights, and may create a greater safety concern by forcing PWC operators to venture offshore to transit between Dade and Monroe Counties. The Florida Fish & Wildlife Conservation Commission has indicated the same concern and has requested that the Superintendent of the Park reconsider his position on the PWC ban.

The Marine & Port Advisory Committee has recommended that the Board of County Commissioners draft a letter to the Park to eliminate the ban on PWC operation on the ICW through the Park. Staff supports this recommendation.



June 16, 2006

Ken Haddad

Executive Director, Florida Fish and Wildlife Conservation Commission
620 South Meridian Street *KH*
Tallahassee, Florida 32399-1600

RE: Biscayne National Park - Boating Safety

Dear Mr. Haddad:

On behalf of the American Watercraft Association (AWA), this letter is to request Florida Fish and Wildlife Conservation Commission's (FWCC) position on the closure of the Intracoastal Waterway (ICW) through Biscayne National Park to Personal Watercraft (PWC). The closure creates a boating safety hazard for PWC riders traveling to and from the Florida Keys. Furthermore, the AWA request FWCC as Florida's boating safety agency, to express concern over the closure and require Biscayne NP Superintendent Lewis to provide a safe route through the park for PWC riders.

The ICW runs the entire length of the park and is an important boating highway for both commercial and recreational vessels, as it affords sheltered and unobstructed access from Miami to the Florida Keys.

However, the PWC ban in the park and the closure of the 17-mile stretch of the ICW mandates PWC riders to operate beyond reef tract in the Atlantic Ocean. This places PWC riders in unnecessary danger by requiring small vessels to operate offshore. PWC are not designed and the PWC industry does not recommend the operation of PWC offshore, but the closure of the ICW forces PWC riders into the open ocean.

AWA is a nationwide PWC grassroots organization defending the freedom to ride. There are nearly 20,000 registered PWC in Dade, Monroe and Broward Counties. Being denied safe passage on the ICW through Biscayne National Park unfairly and adversely impacts thousands of boating families.

AWA looks forward to receiving FWCC's position on the closure of the ICW as a boating safety issue and Superintendent Lewis' response to FWCC's request to providing a safe route through the park for PWC riders.

AWA appreciates your attention to this boating safety issue.

Respectfully,

Peggy Mathews

Peggy Mathews
American Watercraft Association
Florida Representative

Attachments:

National Boating Safety Advisory Council Resolution (passed November 2005)

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION



RODNEY BARRETO
Miami

SANDRA T. KAUPE
Palm Beach

H.A. "HERKY" HUFFMAN
Enterprise

DAVID K. MEEHAN
St. Petersburg

KATHY BARCO
Jacksonville

RICHARD A. CORBETT
Tampa

BRIAN S. YABLONSKI
Tallahassee

KENNETH D. HADDAD, Executive Director
VICTOR J. HELLER, Assistant Executive Director

DIVISION OF LAW ENFORCEMENT
COLONEL JULIE JONES, Director
LT. COLONEL JIM BROWN, Deputy Director
LT. COLONEL DON HOLWAY, Deputy Director
LT. COLONEL JIM McCALLISTER, Deputy Director
LT. COLONEL MIKE WIWI, Deputy Director
(850)488-6251, TDD (850) 488-9542

July 7, 2006

Ms. Peggy Mathews
American Watercraft Association
Florida Representative
1520 Big Sky Way
Tallahassee, FL 32317

Dear Ms. Mathews:

The Florida Fish and Wildlife Conservation Commission (FWC) has considered your request offered on behalf of the American Watercraft Association, dated June 16, 2006, pertaining to boating safety issues resulting from the closure of all waters within the boundaries of Biscayne National Park to personal watercraft operation. As the lead agency responsible for Florida's recreational boating safety program and the enforcement of boating laws within our state, it is appropriate that we provide the following comments.

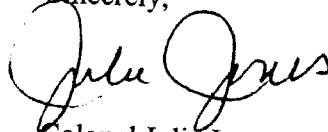
The FWC supports responsible efforts to protect Florida's environment while ensuring a wide variety of safe and enjoyable recreational opportunities for Florida's residents and visitors. On the other hand, regulations that create an unreasonable and unnecessary safety risk to outdoor users should be reevaluated and modified appropriately. The National Park Service's (NPS's) restriction from free and unobstructed safe passage for personal watercraft operators desiring to use the Intracoastal Waterway (ICW) through Biscayne National Park is one such regulation.

The prohibition against personal watercraft within Biscayne National Park's boundary, including the 17-mile stretch of ICW that traverses the park, creates an unreasonable and unnecessary safety risk to personal watercraft riders. Instead of being able to enjoy the safe inside passage afforded by the ICW, personal watercraft riders wishing to ride from Miami to points south (including the Florida Keys), are forced well beyond the nearest shoreline and into a long stretch of open Atlantic Ocean. Requiring such measures by personal watercraft riders while the ICW's protected waters are both federally designated for such safe passage and are readily available for use by all other types of vessels is a regulation that should be reevaluated based on elevated safety risks to personal watercraft riders.

Ms. Peggy Mathews
Page Two
July 7, 2006

The FWC will again initiate communication with the managers of Biscayne National Park to encourage consideration of enacting alternatives that will both protect the natural resources within the park and afford all vessel operators and their passengers with free and unobstructed safe passage intended by both state and federal law.

Sincerely,



Colonel Julie Jones
Director, Division of Law Enforcement

jj/rm

cc: Kenneth D. Haddad
Lt. Colonel Jim Brown

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION



RODNEY BARRETO
Miami

SANDRA T. KAUPE
Palm Beach

H.A. "HERKY" HUFFMAN
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DAVID K. MEEHAN
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KATHY BARCO
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RICHARD A. CORBETT
Tampa

BRIAN S. YABLONSKI
Tallahassee

KENNETH D. HADDAD, Executive Director
VICTOR J. HELLER, Assistant Executive Director

OFFICE OF THE EXECUTIVE DIRECTOR
(850) 487-3796 TDD (850) 486-9642

July 25, 2006

Mr. Mark Lewis
Superintendent
Biscayne National Park
9700 SW 328 Street
Homestead, FL 33033

Dear Superintendent Lewis:

The Florida Fish and Wildlife Conservation Commission (FWC) is hereby submitting a formal petition to the National Park Service (NPS) pertaining to the prohibition against personal watercraft (PWC) within the 17-mile stretch of Intracoastal Waterway (ICW) that traverses Biscayne National Park. We are requesting the initiation of rulemaking to eliminate the current prohibition in order to reduce significant boating safety concerns. This request is consistent with our agency concerns expressed to you on September 27, 2005, when Lt. Colonel Jim Brown and South Regional Director Chuck Collins met with you.

It is our contention that the exclusion of PWC within the Biscayne National Park's boundary, specifically the 17-mile stretch of ICW that traverses the park, creates an unreasonable and unnecessary safety risk to PWC riders. Instead of being afforded safe inside passage provided by the ICW, PWC riders wishing to ride from Miami to points south (including the Florida Keys) and back are forced well beyond the nearest shoreline and into a long stretch of open Atlantic Ocean. The protected waters within the ICW have been federally designated for safe passage and are readily available for use by all vessels in the remainder of the state.

We request that the NPS initiate rulemaking to allow PWC operation, specifically within the limits of the ICW passing through the Park, as quickly as possible. We thank you for your consideration. If you would like to discuss this matter further, please contact Major Paul Ouellette, Boating and Waterways Section Leader, at (850) 410-0656, ext. 17153.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth D. Haddad".

Kenneth D. Haddad
Executive Director

kh/rm

cc: Colonel Julie Jones
Lt. Colonel Jim Brown

Mr. Mark Lewis

Page 2

July 25, 2006

Bcc: Jim Antista
Chuck Collins
Major Brett Norton
Major Paul Ouellette

Part Book - Regional Accounts

CC Lewis

From Ouellette



IN REPLY REFER TO:

United States Department of the Interior

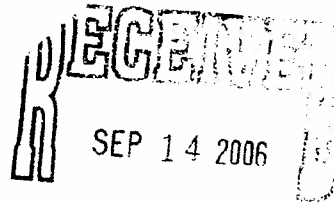
National Park Service
Biscayne National Park
9700 S. W. 328th Street
Homestead, Florida 33033-5634



cc: Jim Antista
Chuck Collins
Brett Norton
PAUL OUELLET
Julie Jones
Jim Brown

W48

SEP 07 2006



BOATING SAFETY &
WATERWAY MANAGEMENT

Mr. Kenneth D. Haddad
Executive Director
Florida Fish and Wildlife Conservation Commission
620 South Meridian Street
Tallahassee, FL 32399-1600

Dear Mr. Haddad,

Thank you for your letter of July 25, 2006, requesting we reconsider the National Park Service (NPS) prohibition on personal watercraft (PWC) within the boundaries of Biscayne National Park, and initiate rulemaking to eliminate that prohibition.

Personal watercraft are managed in accordance with National Park Service (NPS) regulations promulgated six years ago. As personal watercraft use began to expand throughout the 1990s, the NPS began studying the impacts of this use. During this review, over 20,000 public comments were received. The determination of impacts and the appropriateness of use were based on these comments, legislation applicable to the NPS, specific park establishment guidelines, and general policies governing uses in national park areas. A determination was made that absent specific designation, the use of personal watercraft in units of the National Park System is prohibited, although some seashore units and recreation areas could be designated. A decision was made to prohibit personal watercraft at Biscayne National Park based upon these factors.

You have specifically asked that we reconsider PWC use along the approximately 17 mile portion of the Intracoastal Waterway (ICW) that traverses through the heart of the park. In addition to the de facto opening of the park to PWC's this action would require, there are also significant safety issues involved, and we believe there would be a need for increased park ranger presence which the park cannot currently support.

PWC's are typically much smaller than other boats, especially boats using the ICW. For this reason, we believe PWC's would experience compromised safety due to the wake from large vessels in the ICW or the operators may try to avoid them by deviating into other portions of the park. Navigational markers along the ICW are spaced approximately 5 miles apart, making it very difficult to see from one marker to the next, thus making them impractical for PWC users to follow, especially since PWC users do not normally carry charts or navigational equipment, as conventional motorboat operators do. And finally, if PWC's were to stay within the ICW while in the park, they would be unable to access public marinas and fuel.

TAKE PRIDE
IN AMERICA

We continue to believe there are legitimate concerns regarding resource impacts and public safety that are relevant to personal watercraft use. At Biscayne National Park, these include impacts to fragile natural areas, including shallow sea grass flats and coral reefs. The park is also concerned with potential impacts to the federally endangered manatees that frequent the park, the world-renowned areas recognized for bonefish, and visitor conflicts between fishermen and personal watercraft users.

For these and other reasons, the National Park Service has determined that the initiation of rulemaking to eliminate that prohibition on PWC use in the ICW would also not be a prudent use of limited resources.

Thank you for your continued interest in the National Park Service and Biscayne National Park. Please feel free to contact me on this or other matters at 305-230-1144.

Sincerely,



Mark Lewis
Superintendent

February 5, 2007

Honorable Josephus Eggelletion, Jr., Mayor
Broward County Board of County Commissioners
115 S. Andrews Avenue
Fort Lauderdale, FL 33301

Re: Personal Watercraft Use of Intracoastal Waterway in Biscayne National Park

Dear Mayor Eggelletion:

It has come to the attention of the Broward County Marine Advisory Committee (MAC) that the National Park Service has prohibited personal watercraft (PWC) from using the 17 mile stretch of Intracoastal Waterway that traverses Biscayne National Park. The MAC, at their February 1, 2007 meeting, unanimously passed a motion, in support PWC's use of the Intracoastal Waterway in Biscayne National Park. This would permit safe passage to the Florida Keys instead of forcing PWC operators to use the open Atlantic Ocean. The current prohibition of PWC use of the Intracoastal Waterway creates unsafe boating conditions and unnecessarily endangers PWC operators and their passengers.

The motion is as follows: *The Broward County Marine Advisory Committee recommends to the Broward County Board of County Commissioners, that the County Commission support the Florida Fish and Wildlife Conservation Commission (FFWCC) in its efforts to initiate rule making to allow PWC operation on the Intracoastal Waterway in Biscayne Park.* Attached is a letter from the Executive Director of the FFWCC to the Superintendent of Biscayne National Park in support of the rule change. We would appreciate if the County Commission could send a similar letter to Superintendent Lewis.

If you have any questions, please call me at 954-295-4255, or our staff liaison, John R. Fiore at 954-577-4639.

Sincerely,

Daniel H. Yaffe
Chair

attachment

- c. Broward County Board of County Commissioners
Broward County Marine Advisory Committee
Pam Bragaccio, Broward County Administrator
Pamela Madison, Director, Broward County Office of Public and Governmental Relations
Larry Lietzke, Director, Community Services Department
Bob Harbin, Director, Broward County Parks and Recreation Division
Jaime Plana, Superintendent, Planning & Design Sect., Broward County Parks & Recreation

Div.

Celebrating



National Safe Boating Council

"Safer Boating Through Education and Outreach"

P.O. Box 509 Bristow, VA 20136 Ph: 703-361-4294 Fax: 703-361-5294

November 2, 2007

Mary Bomar, Director
National Park Service
U. S. Department of Interior
1849 C Street, N.W. Room 3113
Washington, D. C.

Dear Ms. Bomar:

This letter comes to you as a public inquiry to a policy I understand that is in place concerning Personal Watercraft (PWC) operation within the boundaries of Biscayne National Park. I understand operation of personal watercraft is prohibited in this area. This prohibition includes the intra-coastal waterway. Please explain the reasons, be they safety or environmental, for this exclusion.

I have been informed recently of this exclusion by a number of member groups of the National Safe Boating Council. Their concern is based on the expectation that a boater operating a PWC must navigate outside of the protected bay area of the ICW and travel beyond the boundary of the navigable ICW waters which lie within the park boundaries in order to travel through to the other side of the park. It is my understanding that no other recreational boat type has been prohibited from using the ICW. Being somewhat familiar with the open waters beyond the ICW it is my professional opinion this could present an undue safety risk and unnecessary threat to human life. I'm certain that isn't what the National Park Service wants to create. Is there some way to permit passage through the ICW within the bay that doesn't interfere with your reasons for this restriction? With your response, I wish to satisfactorily explain this safety concern.

Thank you. I anxiously await your response so I may be of assistance to clarify this safety issue.

Respectfully,

Virgil Chambers
Executive Director
National Safe Boating Council

Cc: Mark Lewis



NATIONAL ASSOCIATION OF STATE BOATING LAW ADMINISTRATORS

November 21, 2007

Mr. Mark Lewis
Superintendent
Biscayne National Park
9700 SW 328 Street
Homestead, FL 33033

Dear Mr. Lewis:

On behalf of the National Association of State Boating Law Administrators (NASBLA), I am writing to inquire as to the prohibition against personal watercraft (PWC) within the 17-mile stretch of the intercoastal waterway that transverse Biscayne National Park. Please explain why this prohibition exists against PWCs and whether or not a rulemaking process may be initiated in order to lift this prohibition, which we believe threatens boating safety in the park.

NASBLA represents recreational boating safety professionals from each of the 56 U.S. states and territories. Our mission is to strengthen the ability of the state and territorial boating authorities to reduce death, injury and property damage associated with recreational boating and ensure a safe, secure and enjoyable boating environment. Our members recognize recreational boating as perhaps the greatest and most enjoyable American pastime, and encourage you to change the policy in Biscayne National Park which prohibits the use of PWCs in furtherance of keeping boating both enjoyable and safe.

We believe that forcing PWC operators out of the protected waters of the intercoastal waterway creates an unnecessary risk to the health and safety of these boaters. It is our understanding that no other recreational boat type has been prohibited from using the intercoastal waterway as it crosses the Biscayne National Park. Forcing any boater out of the protection of the intercoastal into open ocean is unsafe and irresponsible. Responsible waterways management would dictate that PWC operators be given the same rights of safe passage that all other recreational boaters enjoy.

We would request that either Biscayne National Park change this policy immediately, or begin the rulemaking process to do so with all due haste. The lives and well-being of the thousands of users who enjoy the park depends on it. We appreciate your attention to this issue and we hope that you will act quickly in order to maintain the highest levels of safety in Biscayne National Park. If we can be of any assistance in this matter, please do not hesitate to contact me directly.

Sincerely,

Major John C. Fetterman
President, National Association of State Boating Law Administrators (NASBLA)

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