



National Park Service
U.S. Department of the Interior

Niobrara National
Scenic River

146 S. Hall St.
P.O. Box 319
Valentine, NE 69201

Superintendent's Compendium
Of Designations, Closures, Permit
Requirements and Other Restrictions
Imposed Under Discretionary Authority.

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Approved:

-Signature on File- Date: June 1, 2009
Dan A. Foster, Superintendent

In accordance with regulations and the delegated authority provided in Title 36, Code of Federal Regulations ("36 CFR"), Chapter 1, Parts 1-7, authorized by Title 16 United States Code, Section 3, the following provisions apply to all lands and waters administered by the National Park Service (NPS), within the boundaries of Niobrara National Scenic River. Unless otherwise stated, these regulatory provisions apply in addition to the requirements contained in 36 CFR, Chapter 1, Parts 1-7. Much of the land within the boundary of Niobrara National Scenic River is in private ownership. Other public lands also lie within the boundary. The NPS has no regulatory authority over these lands. The provisions of this compendium apply only to the Niobrara River within the Niobrara National Scenic River (NNSR) boundary.

Written determinations, which explain the reasoning behind the Superintendent's use of discretionary authority, as required by Section 1.5(c), appear in this document identified by italicized print.

I. 36 CFR §1.5 – PUBLIC USE LIMITS, CLOSURES, AND AREA DESIGNATIONS FOR SPECIFIC USE OR ACTIVITIES

(a)(1) The following public use limits are established for all portions of the Niobrara River, and the following closures are established for all of the Niobrara River to all public use or to a certain use or activity:

Public Use Limits:

- **Glass.** The possession or use of glass beverage or food containers is prohibited.

Determination: Glass containers are prohibited on most managed rivers throughout the nation. When introduced into the river they are often broken and become a serious safety risk to visitors and wildlife. Safety posters displayed at local outfitter offices and information in NPS brochures advise people not to bring glass on river trips. Many visitors continue to carry glass, especially beverage containers, which often end up in the river.

There are no state laws prohibiting the use of glass on waters within the State of Nebraska nor is there a federal regulation in 36 CFR prohibiting the use of glass on waters within national parks. These actions can be associated with 36 CFR 1.5 (a) as necessary for the maintenance of public health and safety, protection of environmental or scenic values, and protection of natural or cultural resources, and 2.14 (6) polluting or contaminating NNSR waters or water courses.

- **Styrofoam.** The possession of foam (commonly known as Styrofoam), polypropylene, expanded polypropylene and polystyrene coolers are prohibited. This prohibition includes coolers, ice chests, cups and containers. High density bait containers, used solely for that purpose, are allowed and are exempt from this regulation.

Determination: *The purpose for the closure is the protection of natural resources and the enhanced safety of maintenance personnel. Styrofoam is not biodegradable and commonly breaks into small pieces when subjected to rough handling conditions related to transportation in canoes, inner tubes, boats and on trails. These pieces may potentially be ingested by wildlife. Additionally, broken coolers result in the loss (litter) of their contents. Fast currents have a tendency to force free floating coolers or parts of coolers into downed logs, trees (root wads) and boulders. National Park Service employees assigned to collecting trash and debris on the river are routinely put in hazardous situations by attempting to collect Styrofoam from root wads and other dangerous areas.*

There are no state laws prohibiting the use of Styrofoam on waters within the State of Nebraska nor is there a federal regulation in 36 CFR that prohibits the use on waters within national parks. Prohibiting the use of Styrofoam will decrease refuse within NNSR water areas. Refuse and sanitation regulations are enforced through 36 CFR, chapter 2.14.

- **Large volume alcohol containers.** The possession or use of any large volume alcohol containers that hold more than one gallon of an alcoholic beverage is prohibited. This includes but is not limited to the following: kegs, quarter kegs, pony kegs, party balls, or similar containers. The possession or use of “beer bong” or other similar rapid alcohol ingesting devices is prohibited. This includes any object or device that is intended and designed for the rapid consumption/intake of an alcoholic beverage, including but not limited to funnels, tubes, hoses and modified cans with additional vents. The possession or consumption of any alcoholic substance that is in a gelatin form is prohibited.

Determination: *The aforementioned alcohol-related activities are prohibited on the river to protect public health and safety, to protect natural resources and to avoid conflict among visitor use activities. In 2007 NNSR completed the General Management Plan (GMP), which outlines general principles of National Park Service management of the river. Through this public process and from additional public comment about river use, the issue of greatest interest of concerned individuals is the rowdy, party atmosphere and accompanying inappropriate behavior on the river. A commonly expressed public perception is that the river is no longer a safe place to bring families and children. Measures are being pursued in an attempt to create a safer and more appropriate atmosphere that can be enjoyed by all visitors.*

Currently, there is no Nebraska State Law, Federal Regulation or county ordinance that prohibits or restricts any of these alcohol related activities. 36 CFR 2.35 (3)(i) gives the superintendent the authority to close all or a portion of a public use area within NNSR to the consumption of alcoholic beverages and/or to the possession of a bottle, can or other receptacle containing an alcoholic beverage. Determination has been made that incidents of aberrant behavior related to the consumption of alcoholic beverages are of such magnitude that the diligent application of the authorities in chapters 2.35 (Alcoholic Beverages) and 2.34 (Disorderly Conduct), over a reasonable time period, has not alleviated the problem.

- **Dry Ice.** The possession and/or use of dry ice is prohibited. Dry ice is defined as a solidified form of carbon dioxide.

Determination: *The possession and/or use of dry ice is prohibited on all portions of the river for public health and safety reasons, for protection of natural resources and for the avoidance of conflict among visitor use activities. In many National Park units where water related activities occur, law enforcement officials have received complaints and reports from visitors of people throwing dry ice chunks referred to as “bombs”. These dry ice bombs create litter debris, disturb fish and wildlife, create hazardous situations, hinder the enjoyment and experience of other visitors and could possibly cause injury to visitors.*

Dry ice bombs do not fall under the elements of explosives in 36 CFR, chapter 2.38, nor are they considered explosives under any Nebraska State Law or Federal Regulation. This activity can be associated with chapter 2.34 as it creates a hazardous condition and makes noise that is unreasonable, considering the nature and purpose of the actor's conduct; and chapter 2.14 as the containers used to store dry ice bomb materials pollute NNSR waters when discharged.

- **Mardi Gras-style beads.** The possession or distribution of Mardi Gras-style bead necklaces or similar paraphernalia intended to cause behavior associated with disorderly conduct is prohibited. Such inappropriate behavior includes, but is not limited to, fighting, solicitation of nudity, enhancing alcohol use (especially among under-aged visitors), obscene language and creating a public nuisance. Mardi Gras-style bead necklaces are defined as necklaces that consist of multi-colored beads made from a variety of materials including, but not limited to, plastic, aluminum or similar material, regardless of length or size of the necklace.

Determination: *Increased inappropriate behavior related to Mardi Gras-style beads has resulted in numerous complaints of nudity, obscene language and the unwanted solicitation of female visitors. The use of Mardi Gras-style beads or similar paraphernalia for solicitation is an issue that has been brought forth through the General Management Plan and public complaint. This type of behavior conflicts with promoting a peaceful atmosphere and is commonly associated with disorderly conduct and alcohol violations. In addition, this prohibition is for the protection of natural resources and the enhanced safety of maintenance personnel. Beads are not biodegradable and may potentially be ingested by or cause entrapment of wildlife. National Park Service employees assigned to collecting trash and debris on the river are routinely put in hazardous situations by attempting to collect this type of material from the river.*

CFR regulations related to disorderly conduct are found in chapter 2.34 (2); engaging in a display or act that is obscene and/or creates or maintains a hazardous or physically offensive condition in 2.34 (4). There are no state laws prohibiting the use of beads on waters within the State of Nebraska nor is there a federal regulation in 36 CFR that prohibits the use on waters within national parks. Prohibiting the use of beads will decrease refuse within NNSR water areas. Refuse and sanitation regulations are enforced through 36 CFR, chapter 2.14.

(a)(2) The following restrictions and/or conditions are in effect for the specific uses or activities noted:

Closures and Limitations:

Lashing together of vessel. The practice of lashing or tying together vessel is limited to a maximum group size of ten (10) people. Examples include ten (10) individual tubes, five (5) canoes or kayaks in any combination (however, it is strongly recommended that canoes and kayaks not be tied to any other vessel), or three (3) giant tubes. Rafts may not be secured to any other vessels, however one cooler tube may be secured to rafts.

Determination: *Large flotillas of vessels are a significant hazard to visitors and resources on the river. Because large flotillas are not maneuverable, they pose safety problems for users who may fall off and have the mass float over them. The larger the flotilla mass, the longer a person must remain submerged underneath, increasing the potential for drowning. In addition, a large flotilla can completely block narrow portions of the river. Such congestion makes it difficult or even impossible for other river users to avoid obstacles. Large flotillas are difficult to maneuver and they can create excessive wear to equipment, creating added replacement costs to outfitters. Large flotillas are often dragged partly out of the water at landings and left blocking the landing for other visitor use. Rangers have witnessed children and adults fall from flotillas and be swept beneath them. River users not riding on a specific flotilla have also been forced underwater as a flotilla has overtaken them.*

There are no state laws limiting group size on waters within the State of Nebraska nor is there a federal regulation in 36 CFR that limits group sizes on waters within national parks. These actions can be associated with 36 CFR 2.34 (4) as they create hazardous conditions.

- **Jet skis and other personal watercraft (PWC).** 36 CFR 3.9 prohibits the use of these devices.

***Determination:** In regulations promulgated in April 2000, the NPS determined that PWC use is generally inappropriate in units of the National Park System. The NPS recognizes, however, that there are units where PWC use may be appropriate considering the purpose for which the area was created and other factors. There were 21 parks in which the use of PWC may be permitted and these were published in the Federal Register on March 23, 2007. The Niobrara National Scenic River was not included on this list.*

- **Motorized Craft.** The use of motorized vessels is prohibited, except as noted below.

***Determination:** The shallow depth of water within Niobrara National Scenic River combined with the moving nature of sandbars and submerged hazards make the use of motorized craft inherently dangerous. Operation of motorized vessels in combination with non-motorized vessels in narrow river channels would also be a detriment to visitor safety. Shallow waters and underwater resources, including wildlife, would also be susceptible to impacts from motorized use.*

These actions can be associated with 36 CFR 1.5 (a) as necessary for the maintenance of public health and safety, protection of environmental or scenic values, and protection of natural or cultural resources. Regulations pertaining to preservation of natural, cultural and archeological resources are enforced through 36 CFR 2.1. Local, state or federal government agencies involved in search and rescue activities are exempted from this regulation. 36 CFR 3.3 provides that the superintendent may issue a permit for research activities requiring motorized craft.

- **Motorized Vehicles.** The use of motorized vehicles (including trucks, cars, busses, all-terrain vehicles, snowmobiles, etc.) is prohibited, except as noted below.

***Determination:** The purpose for the closure is the protection of natural resources and the enhanced human safety. Variations in channel depth in the Niobrara River combined with the moving nature of sandbars and submerged hazards make the use of motorized vehicles inherently dangerous. Operation of motorized vehicles in combination with non-motorized vessels in narrow river channels would also be a detriment to visitor safety. The river's waters and underwater resources, including wildlife, would also be susceptible to numerous impacts from motorized use. Local, state or federal government agencies involved in search and rescue activities are exempted from this regulation. The occasional movement through the River by a landowner or their authorized representative for administrative purposes would be acceptable, which may include ranching operations, guiding hunters, and the retrieval of harvested game. Any usage of a motorized vehicle in the Niobrara River shall be in a manner that minimizes time in the water and minimizes impact on the Outstandingly Remarkable Values of the Niobrara National Scenic River.*

These actions can be associated with 36 CFR 1.5 (a) as necessary for the maintenance of public health and safety, protection of environmental or scenic values, and protection of natural or cultural resources. Regulations pertaining to preservation of natural, cultural and archeological resources are enforced through 36 CFR 2.1 and 2.14 (a) (6) polluting or contaminating NNSR waters or watercourses.

- **Horse and/or Pack Animals.** Horse and/or pack animals are prohibited, except as noted below.

***Determination:** The purpose for this closure is the protection of natural resources and of visitor safety. The strong current, deep channels and the moving nature of sandbars and submerged hazards make crossing the river by horseback hazardous. Many riders who utilize the services of an outfitter are novices or inexperienced riders. Repeated crossing of the river in established locales could result in damage to aquatic resources and contribute to pollution of NNSR waters by feces and urine. Occasional use of horses by landowners for maintaining fences, herding livestock or guiding hunters, etc. would be acceptable.*

These actions can be associated with 36 CFR 1.5 (a) as necessary for the maintenance of public health and safety, protection of environmental or scenic values, and protection of natural or cultural resources. Regulations pertaining to preservation of natural, cultural and archeological resources are enforced through 36 CFR 2.1 and 2.14 (a) (6) polluting or contaminating NNSR waters or watercourses.

- **Stock Tanks.** The use of stock tanks as watercraft or vessels is prohibited.

***Determination:** Because stock tanks are more difficult to maneuver than tubes, canoes, kayaks and rafts, they can pose additional safety problems, especially in their use on narrow confines of NNSR. Stock tanks could collide with tubers, boaters, swimmers or people wading in swift water, knocking over or submerging them. Although stable and resistant to capsizing, occupants in tanks could have difficulty getting in or out in emergency situations to stop or slow down the tanks, or climbing back in from a deeper channel. Damage to natural resources is also possible when tanks scrape upon rocks, over sandbars and against woody debris, causing impacts to aquatic vegetation and benthic macro-invertebrates.*

There are no state laws prohibiting the use of stock tanks on waters within the State of Nebraska nor is there a federal regulation in 36 CFR prohibiting the use of stock tanks on waters within national parks. These actions are associated with 36 CFR 2.1 as they create hazardous conditions for natural resources and 2.34 (4) as they create hazardous conditions for people.

II. 36 CFR §1.6 – ACTIVITIES THAT REQUIRE A PERMIT

Contact the Chief Ranger's Office for permit information and applications:

Niobrara National Scenic River
146 S. Hall St., P.O. Box 319
Valentine, NE, 69201

402-376-1901 phone
402-376-1949 fax

(f) The following is a compilation of those activities on the river for which a permit from the superintendent is required:

- §2.5(a) Specimen collection (Taking of plants or wildlife) - Removal of wildlife for purposes other than those under legal hunting, fishing or trapping as regulated through Nebraska state laws and regulations.
- §2.12 Audio Disturbances:
 - (a)(3) Operation of any type of portable motor or engine, or device powered by a portable motor or engine
 - (a)(4) Operation of a public address system in connection with a public gathering or special event for which a permit has been issued pursuant to §2.50 or §2.51

- §2.37 Soliciting or demanding gifts, money goods or services (Pursuant to the terms and conditions of a permit issued under §2.50, §2.51 or §2.52)
- §2.38 Explosives:
 - (a) Use, possess, store, transport explosives, blasting agents
- §2.4 Weapons, traps and nets:
 - (a) Possession of weapons, traps or nets is prohibited on the waters of the Niobrara National Scenic River except as permitted under existing law.
- §2.50(a) Conduct a sports event, pageant, regatta, public spectator attraction, entertainment, ceremony, and similar events
- §2.51(a) Public assemblies, meetings, gatherings, demonstrations, parades and other public expressions of views
- §2.62 Memorialization:
 - (b) Scattering ashes from human cremation
- §5.5 Commercial Photography/Filming:
 - (a) Commercial filming of motion pictures or television involving the use of professional casts, settings or crews, other than bona fide newsreel or news television
 - (b) Still photography of vehicles, or other articles of commerce or models for the purpose of commercial advertising.

III. GENERAL REGULATIONS

36 CFR §2.2 - WILDLIFE PROTECTION

(a) The transporting of lawfully taken wildlife on the river is permitted under the following conditions and procedures:

- Hunting, fishing and trapping are allowed in accordance with Nebraska state laws and regulations.
- Lawfully taken and tagged wildlife may be transported on the river.

36 CFR §2.21 – SMOKING

(a) The following portions of NNSR, or all or portions of buildings, structures or facilities are closed to smoking as noted:

- Smoking is prohibited in all government owned or leased vehicles and government buildings.
- Smoking is not permitted within 25 feet of the entrance to any government building.

Determination: Smoking is prohibited in all government vehicles and buildings, to comply with government-wide health and safety policies.