

**SPECIAL MANDATES
SLEEPING BEAR DUNES NATIONAL LAKESHORE
JULY 2006**

Special mandates are laws or regulations that are more specific to the National Lakeshore, when compared to National Park Service (NPS) service-wide legal and policy requirements:

1836 Treaty

Sleeping Bear Dunes National Lakeshore is in the area ceded by the *Treaty with the Ottawa, etc. March 28, 1836* between the United States and regional Ottawa and Chippewa peoples. Five federally recognized tribes are located in this area. A court case, *U.S. vs. Michigan*, is pending to determine the extent of the rights allowed by this treaty.

Hang Gliding

The National Lakeshore has a special regulation allowing hang gliding by permit in certain areas.

Title 36 of the Code of Federal Regulations, Section 7.80 states: “*Powerless Flight. The use of devices designed to carry persons through the air in powerless flight is allowed at times and locations designated by the superintendent, pursuant to the terms and conditions of a permit.*” The park has a Powerless Flight Plan, dated 2001, that specifies areas and provides information on obtaining and issuing permits in compliance with the regulation.

Land Ownership

The National Lakeshore contains a number of properties where the previous owner sold the property to the federal government but reserved the right to remain on the property for a specified number of years or for the life of the owner. Certain other private property owners within the boundary signed an Agreement restricting use and development on the property. Lands added to the National Lakeshore as a result of the 1982 amendment (Bow Lakes and Miller Hill) provided the federal government acquisition by donation, willing seller, or with the “right of first refusal” when lands within these areas were offered for sale.

In accordance with SLBE's enabling legislation, Public Law 91-479, dated October 21, 1970, Section 3 (a) designated the following land categories:

- Category I, public use and development areas.
- Category II, environmental conservation areas.
- Category III, private use and development areas.

Michigan Sand Dune Legislation (Critical Dunes)

Certain sand dune areas within the National Lakeshore are protected by the State of Michigan from indiscriminant development (Sand Dunes Protection and Management Program, Part 353 of the Natural Resources and Environmental Protection act, 1994 PA 451). Some of the designated areas are forested and extend some distance inland from the Lake Michigan shoreline.

Coastal dunes are in danger of being destroyed by overuse, misuse, and unwise development. They are popular sites for home building, off road vehicle use and other intensive recreational uses, as well as sand mining and other commercial activities. Recognizing this threat, the people of Michigan enacted legislation in 1989 to more adequately ensure protection of the dunes. The Sand Dunes Protection and

Management Program, being part of 353 of the Natural Resources and Environmental Protection Act, 1994 PA 451, forms the basis for protecting sand dunes from indiscriminate development. Part 353 establishes protective standards on dunes considered to be the most sensitive. Such areas are now legally defined as critical dunes and include approximately 70,000 acres along the shorelines of Lakes Michigan and Superior. Critical dunes are designated by the acts and are identified in the Atlas of Critical Dunes, dated February 1989, developed by the Land and Water Management Division, Department of Environmental Quality (DEQ).

The standards in the acts are intended to ensure that the dunes are protected when new uses and developments are proposed that significantly alter the physical characteristics of a critical dune area. The standards, among other things, require new uses to be set back behind the crest of a critical dune, limit the amount of grading and vegetation removal allowed, and prohibit construction on steep slopes.

Minerals

The National Park Service is authorized to restrict removal of sand and gravel if these activities would detract from the National Lakeshore's scenery (1970 park enabling legislation).

The 1970 park enabling legislation (PL 91-479) states "Any zoning bylaw or amendment thereto submitted to the Secretary for approval for the purposes of this Act shall be approved by him if such bylaw or amendment contains provisions which are designed to preserve the lakeshore character of the area by appropriate restrictions upon...removal of sand or gravel...which would detract from the natural or traditional lakeshore scene."

Un-severed mineral rights (rights owned by the surface property owner) were acquired in fee for all properties acquired in fee. No attempts have been made to acquire severed mineral interests (interests owned by a party other than the surface property owner) or un-severed interests associated with properties protected under restrictive agreements. Mineral rights reserved include oil, gas, coal, and other.

Outstanding mineral interests have not been considered to be a significant problem, as little is known about mineral resources and little exploratory activity has occurred. Some oil and gas exploration has occurred in and near the National Lakeshore but no development activity to date. Gravel deposits adjacent to the Bow Lakes unit of the National Lakeshore have been mined extensively and continue to the present. A township zoning ordinance has helped to protect park resources in this area. Several areas within the National Lakeshore that were previously used for sand and gravel extraction are being restored by the NPS.

National Historic Landmark – North Manitou island Life-Saving Service Complex

The National Lakeshore includes one National Historic Landmark, the North Manitou Island Life-Saving Complex, which is the highest designation afforded to a cultural resource.

Outstanding State Resource Waters

Certain waters within the National Lakeshore have been identified by the State of Michigan as "Outstanding State Resource Waters" (Michigan Natural Resources and Environmental Protection Act of 1994 (PA 451)). These waters are protected by the state so as to preserve their special qualities.

Part 31 of PA 451 states that "...rivers flowing into, through, or out of National Parks or National Lakeshores and wilderness rivers...shall not be lowered in quality..." Rule 98 (the "Antidegradation Rule") under the state's Part 4 Rules applies to any action pursuant to Part 31 of PA 451. High quality

water bodies designated as “Outstanding State Resource Waters” (OSRW) by the state are protected by applying controls on pollutant sources to the OSRW or tributaries so that water quality in the OSRW is not lowered. All waters (inland lakes and streams, and Lake Michigan) within the designated boundaries of the National Lakeshore are designated an OSRW [Rule 98, (6) (c) (i)].

Piping Plover Critical Habitat

The U.S. Fish and Wildlife Service designated shoreline areas of Leelanau and Benzie Counties as critical habitat for the Great Lakes Piping Plover (a shorebird) on June 6, 2001. This designation, which affects part of North Manitou Island, the Platte River Point, and Glen Haven, refers to specific geographic areas that are essential for the conservation of a threatened or endangered species. Critical habitat is a term used in the Endangered Species Act of 1973, as amended.

The Endangered Species Act (ESA) of 1973, as amended, refers to specific geographic areas that are essential for the conservation of a threatened or endangered species and that may require special management consideration or protection. These areas do not necessarily have to be occupied by the species at the time of designation. This means that areas must be identified which will allow for the protection of the current population, and any population increases that may be required to achieve recovery (allowing the species to be removed from the endangered species list). When deciding what areas to designate as critical habitat, the U.S. Fish and Wildlife Service (Service) looks at the physical and biological features that are necessary for the species to survive. These required features are called primary constituent elements, which include: 1) space for individual and population growth, and for normal behavior; 2) space for food, water, air, light, minerals, or other nutritional or physiological requirements; 3) cover or shelter; 4) sites for breeding, reproduction, or rearing of offspring; and, 5) habitat that is protected from disturbance or is representative of the historic geographical and ecological distributions of a species. Within areas that are designated as critical habitat, Federal agencies are required to do a special review of activities that they intend to carry out, fund, or permit. Their activities cannot destroy or adversely modify the important components of critical habitat. A critical habitat designation does not affect actions that do not involve a Federal agency, but alerts the public to the importance of these areas.

The designation of critical habitat for Great Lakes Piping Plover was published in the *Federal Register* on May 7, 2001 and became effective June 6, 2001.

Proposed Wilderness

Wilderness issues are central to this planning effort. In essence, the 1970 park enabling legislation required a review of wilderness suitability/eligibility, which resulted in a *1975 Wilderness Recommendation*, which was reviewed in the *1979 General Management Plan*, which resulted in a *1981 Wilderness Recommendation*, which was followed by the 1982 amendment to the park’s 1970 enabling legislation.

A *Wilderness Recommendation* for the National Lakeshore was completed in 1981. This document was the result of wilderness studies conducted in the 1970’s, including a *1975 Wilderness Recommendation*. The *1981 Wilderness Recommendation* found approximately 31,000 acres on the mainland and the islands to qualify for congressionally designated wilderness. This recommendation, however, never went through all of the necessary reviews and/or approvals and no wilderness was ever formally designated at the Lakeshore. It was, and still is, proposed wilderness.

Public Law 97-361, October 22, 1982, directed the Department of the Interior to maintain the existing wilderness character and potential of those areas included in the *1981 Wilderness Recommendation* for inclusion in the National Wilderness Preservation System. This act, as well as *NPS Management Policies 2001*, requires that the National Lakeshore manage all lands contained in the *1981 Wilderness Recommendation* as wilderness, pending future action by Congress.

Road Rights-of-Way

In accordance with the park's enabling legislation, Public Law 91-479, dated October 21, 1970, Section 8 (b) states "Any property or interests therein, owned by the State of Michigan or any political subdivisions thereof, may be acquired only by donation." This applies to all road rights-of-way, including those managed by the county road commissions.

Scenic Road Corridors

The National Park Service is authorized to construct and administer, as part of the National Lakeshore, scenic roads within a specified zone ("Crystal Ridge") in Benzie County. It is also authorized to acquire, by donation or purchase, limited lands for these purposes (1970 park enabling legislation).

In accordance with the National Lakeshore's enabling legislation, Public Law 91-479, dated October 21, 1970, Section 12 states "In order to facilitate visitor travel, provide scenic overlooks for public enjoyment and interpretation of the National Lakeshore and related features, and in order to enhance recreational opportunities, the Secretary is authorized to construct and administer as a part of the National Lakeshore scenic roads of parkway standards generally lying within the parkway zone designated on the map specified in section 2(a) of this act. Such scenic roads shall include necessary connections, bridges, and other structural utilities. Notwithstanding any other provision of this Act, the Secretary may procure of this purpose land, or interest therein, by donation, purchase with appropriated or donated funds, or otherwise: *Provided*, That land and interest so procured shall not exceed one hundred and fifty acres per mile of scenic road, except that tracts may be procured in their entirety in order to avoid severances." The map in section 2(a) designated a scenic corridor in Leelanau County, which included "The Kettle," Miller Hill, and Bow Lakes, and in Benzie County known as the "Crystal Ridge." Public Law 37-361, an amendment to SLBE's enabling legislation dated October 22, 1982, removed the Leelanau County scenic corridor. Section 12 in Public Law 91-479 was revised in Section 3 to read "...generally lying within *Benzie County and within the parkway zone designated...*" (italics added).

Trapping, Hunting, and Fishing

Hunting and fishing are permitted in the National Lakeshore (1970 park enabling legislation). Trapping is not allowed in the park (1991 decision by the U.S. Court of Appeals).

The enabling legislation for the National Lakeshore (Public Law 91-479) permitted hunting and fishing, but the act and the legislative history made no mention of trapping. In 1982, the NPS published a proposed regulation to allow trapping in park areas only where such activity is specifically mandated by Federal statutory law [36 CFR Sec. 2.2 (b) (3)]. The final rule was issued in 1986 and Michigan United Conservation Clubs, et. al., thereafter filed the instant action seeking to invalidate the NPS regulation regarding trapping. On November 13, 1991, the U.S. Court of Appeals, Sixth Circuit, upheld the U.S. District Court decision to affirm the NPS ban on trapping within the National Lakeshore.

Water Issues

The National Park Service owns the surface water of Lake Michigan within the quarter-mile boundary of the mainland and the two islands. The state retains ownership of the water surface area of rivers and inland lakes in the park. The federal government (as any riparian owner) owns the bottom lands of rivers or inland lakes within the park to the center of that water body.

Michigan Public Act 359 of 1974, (MCL 3.901, Sec. 1) authorized the Michigan Department of Natural Resources to convey off-*shore* water areas within the park boundary to the federal government. NPS ownership of lands and Lake Michigan waters are defined by the deeds the state ceded to the NPS. The deed language clearly states the conveyance of all state owned land and cession of off-*shore* water area within the park boundary. The park boundary agreed to by the state includes ¼ mile of Lake Michigan waters off-*shore* the mainland and the Manitou Islands. This means that the NPS owns the water areas of Lake Michigan within the quarter-mile boundary of the mainland unit and North Manitou Island and South Manitou Island. No such conveyance of ownership of the water in rivers and inland lakes within the park boundary occurred; therefore, the state retains ownership of the surface area of these water bodies. *Regardless of ownership of the water or lands* within the park boundary, the NPS has jurisdiction over the use of the waters [Title 36 CFR, Section 1.2(a)(3)].

Wetlands Protection

The National Park Service is directed to consult with appropriate state and local officials to ensure protection of the Bow Lakes area (Goemaere-Anderson Wetland Protection Act; referred to in the 1982 park legislation).

The Goemaere-Anderson Wetland Protection Act (GAA) was repealed in 1995 and replaced with Act 451 of 1994, known as the Michigan Natural Resources and Environmental Protection Act (NREPA). This law also provides for wetlands protection in Michigan.

The GAA was referred to in Public Law 97-361 (the 1982 amendment to the park's 1970 enabling legislation). It directed the Secretary to enter into discussions with appropriate State and local officials responsible for administration of the GAA to ensure the protection of natural resources with respect to the 975 acres designated as the Bow Lakes area.

Wild and Scenic Rivers

Section 5(d) of the National Wild and Scenic Rivers Act (16 U.S.C. 1271-1287) requires that "In all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national wild, scenic and recreational river areas." It further requires that "the Secretary of the Interior shall make specific studies and investigations to determine which additional wild, scenic and recreational river areas.....shall be evaluated in planning reports by all Federal agencies as potential alternative uses of water and related land resources involved."

The National Park Service has compiled and maintains a Nationwide Rivers Inventory (NRI), a register of river segments that potentially qualify as national wild, scenic or recreational river areas. The NRI is a listing of more than 3,400 free-flowing river segments in the United States that are believed to possess one or more "outstandingly remarkable" natural or cultural values judged to be of more than local or regional significance. The original NRI, completed in 1982, was conducted by the Department of the Interior with the cooperation of state and local agencies. To be listed, river segments had to meet three basic criteria:

- be free flowing (and generally 25 miles or longer)
- be relatively undeveloped (both river and corridor)
- possess outstanding natural and/or cultural values

In 1990, park staff inventoried and evaluated rivers and river segments that may have had potential for inclusion into the National Wild and Scenic Rivers System. Five streams were inventoried: Platte River, Otter Creek, Shalda Creek, Crystal River, and Good Harbor Creek. Only the Platte River was identified by the park at that time for possible study and inclusion.

A major update to the NRI was initiated in 1993. To be eligible for listing on the updated NRI, river segments had to meet two criteria:

- be free flowing (no mileage requirement)
- have at least one “outstandingly remarkable” value

The Crystal River and the Platte River were included on the 1993 NRI update. The entire segment of the Crystal River within the park (three miles) was included, with the following description: “Sinuous river channel following beach ridges. Large wetlands associated with interdunal wetlands. Remnant beaches contain rich diversity of species. Popular canoeing stream.” The entire segment of the Platte River within the park (four miles) was included, with the following description: “Sinuous river channel following remnant beach ridges. Major archaeological resources relative to mid-woodland period Indian encampments. Popular canoeing destination. Important salmon and trout resource.”