

Indiana Dunes National Lakeshore and the Lake Michigan Shoreline

National Park Service Jurisdiction and Authorities on the Shore

Certain lands and waters along the shoreline of Lake Michigan are within Indiana Dunes National Lakeshore. Areas within Indiana Dunes National Lakeshore are subject to the laws, regulations, and policies applicable to parks in the National Park System. This is a brief synopsis of the more pertinent laws and regulations that apply along the shore. This not an all-inclusive analysis, but a helpful short list.

Boundaries of Indiana Dunes National Lakeshore

Indiana Dunes National Lakeshore has a complex and irregular boundary. Along the shore the boundaries are described in a variety of sections of the Indiana Dunes National Lakeshore Act as amended, and in subsequent notices published in the Federal Register. (See Attachment A)

Succinctly, these are the boundaries of Indiana Dunes National Lakeshore on the Lake Michigan shore:

- At all areas where the national lakeshore is along Lake Michigan, the southernmost boundary is a platted line as described in the Federal Register notices.
- At all areas where the national lakeshore is along Lake Michigan, the northernmost boundary is 300 feet from “the shoreline of Lake Michigan.”

Generally speaking, these areas are:

1. From the east side of the U.S. Steel facility in Gary to Lake Street in Gary, (approximately one linear mile). The northern boundary is 300 feet from the shoreline and the southern boundary is above the Ordinary High Water Mark.
2. From County Line Road in Gary to the west bank of the Burns Waterway (approximately 2.25 miles). The northern boundary is 300 feet from the shoreline and the southern boundary is above the Ordinary High Water Mark.
3. From the east side of the Bailly Generating Station to west side of the Michigan City Generating Station (approximately 11.4 miles). The northern boundary is 300 feet from the shoreline and the southern boundary is above the Ordinary High Water Mark.

Description of Indiana Dunes National Lakeshore boundary along Lake Michigan.

1. In 1976, Congress passed P.L. 94-549, amending the Indiana Dunes National Lakeshore Act. This law, among other boundary changes, extended the park boundary into Lake Michigan. Senate Report No. 94-1189, dated August 30, 1976, details the changes to the national lakeshore shoreline boundary contained in that law.

“Substitutes a reference to a new boundary map dated August, 1976, the effect of which is to revise the boundaries of the Lakeshore from 8,329.8 acres to 11,231.8 acres, including in the new boundary 2,766.08 acres of additional land and 542 acres of submerged land and water area extending 300 feet into Lake Michigan.”

October 2012

“In addition the Committee extended the present boundaries of the Lakeshore three hundred feet into Lake Michigan (approximately 542 acres) in order to provide for better management of shoreline recreation and activities on the Lake. At present the Park Service has difficulty in regulating boating and protecting swimmers.

Notice of the boundary changed encompassing the new Lake Michigan lands was posted in the Federal Register Volume 43, Number 10, January 16, 1978.

National Park Service Regulatory Authority on the Shore

1. The state of Indiana has designated the Ordinary High Water Mark (OHW) for Lake Michigan at 581.5 feet International Great Lakes Datum (IGLD). Under Federal and Indiana law, the bed of Lake Michigan below the Ordinary High Water Mark “is held by the state in trust for the people as a whole, and the property so held in trust as common property for all, from which all may partake so long as in the taking no attempt to deprive others of like privilege,” Lake Sand Co. v. State, 120 N.E. 714 (Ind. App. 1918).

Thus, all areas below OHW are owned by the State and available for public use. Private land ownership and local government jurisdiction do not extend past OHW.

2. The Code of Federal Regulations (CFR), Title 36, governs the National Park Service. Pursuant to 36 CFR §1.2(a)(3), NPS regulations are applied within national parks, including Indiana Dunes National Lakeshore below the Ordinary High Water Mark for lakes or the Mean High Water Line for ocean shores. The CFR states that National Park Service regulations apply to all areas below OHW, regardless of land ownership or other types of law enforcement jurisdiction.

“The regulations contained in this chapter apply to all persons entering, using, visiting, or otherwise within... Waters subject to the jurisdiction of the United States located within the boundaries of the National Park System, including navigable waters and areas within their ordinary reach (up to the mean high water line in places subject to the ebb and flow of the tide and up to the ordinary high water mark in other places) and without regard to the ownership of submerged lands, tidelands, or lowlands.” 36 CFR §1.2(a)(3)*

***Waters subject to the jurisdiction of the United States** refers to three types of waters: (1) navigable (as defined in 33 CFR § 2.36(a)), (2) non-navigable but located on lands for which the U.S. has acquired title or control and has accepted or retained exclusive or concurrent jurisdiction, and (3) waters made subject to U.S. jurisdiction by international agreements and statutes (33 CFR § 2.38). Thus, NPS authorities apply even if the submerged lands are nonfederally-owned, and regardless of the type of jurisdiction over other lands in the park (61 Federal Register 35133 (1996)).

Therefore, all regulations in 36CFR parts 1 through 5, part 7, and part 13 (including the 14 enumerated regulations) apply from the Ordinary High Water Mark on the beach, north to 300 feet from the water’s edge into Lake Michigan, for all areas within the Indiana Dunes National Lakeshore boundaries. This includes the shoreline along Michigan City, Beverly Shores, Porter, Burns Harbor, Dune Acres, Portage, Ogden Dunes, and Gary, regardless of who owns the land.

4. In some areas on the shore in the Town of Porter the National Park Service has easements. These are often call “walking easements” because they permit the public to travel across the private property, but not to stop or otherwise use the private property.

The walking easements are a “less-than-fee” ownership. The United States (National Park Service) has a less-than-fee ownership of the lands described in the easements. The Code of Federal Regulations (CFR), Title 36, governs the National Park Service and units of the National Park System. Pursuant to 36 CFR §1.2(a)(5), NPS regulations are apply in less-than-fee areas:

“The regulations contained in this chapter apply to all persons entering, using, visiting, or otherwise within...(5) Other lands and waters over which the United States holds a less-than-fee interest, to the extent necessary to fulfill the purpose of the National Park Service administered interest and compatible with the nonfederal interest.” 36 CFR §1.2(a)(5)

This portion of the CFR gives the National Park Service authority to enforce regulations on private property within the walking easement “necessary to fulfill the purpose of the National Park Service administered interest and compatible with the nonfederal interest.”

As noted, areas below the Ordinary High Watermark are common property held by the state in trust and private property rights, including the easement deeds, do not apply below the Ordinary High Watermark.

5. The Submerged Lands Act of 1953 (SLA) relinquished to the states all submerged lands from the shoreline (usually the mean high tide line) to three geographical miles seaward of the mean low tide line. In addition to lands off the Atlantic, Pacific and Gulf of Mexico coasts, submerged lands subject to state ownership also include inland navigable lakes (such as the Great Lakes), rivers, and other water bodies.

In addition to title of the submerged lands, the Submerged Lands Act also conveys the minerals and natural resources found in those lands and waters. The Submerged Lands Act reserves for the federal government the right to use, improve, and regulate such lands and the accompanying waters for the purposes of navigation, flood control, or production of power. The United States also retains all its navigational servitude and rights as well as its regulatory powers and control over these waters for the constitutional purposes of commerce, navigation, national defense, and international affairs.

With the passage of the Submerged Lands Act, states have the authority to manage, develop, and lease resources throughout the water column and the land beneath it. However, the NPS may apply its regulations to activities on the surface of the water, within the water column, in the area below mean or ordinary high water, and in some cases on the sea bed, even on state-owned submerged lands, regardless of the park’s jurisdictional type as described in 36 CFR §1.2(a)(3). If there is a conflict between state and federal laws, federal law generally overrides the conflicting state laws under the Supremacy Clause.

Case Law

- Voyageurs National Park issued citations to businesses that were conducting operations on Rainy Lake without an NPS permit in violation of 36 CFR § 5.3. The park was challenged and the court held that NPS's application of its regulations to lake waters was a proper exercise of its jurisdiction under the Property and Commerce Clauses. (*United States v. Armstrong*, 186 F.3d 1055 (8th Cir. 1999)).
- Voyageurs National Park cited a hunter for violating 36 CFR § 2.11 and § 2.32 (prohibiting the possession of firearms and hunting wildlife) notwithstanding a conflicting state law that allowed hunting in national parks. The hunter, who at the time of the offense was located on nonfederal waters inside the park boundary, challenged the park's citation. The court found that the "Property Clause is broad enough to permit federal regulation of nonfederal public lands" and held that the issuance of a citation was appropriate because the hunter's actions constituted a significant interference with the prescribed uses of the park (*U.S. v. Brown*, 552 F. 2d 817 (8th Cir. 1977), cert. den'd 431 U.S. 949 (1977)).
- Ozark National Scenic Riverways promulgated a special regulation that prohibited the delivery or retrieval of rented canoes within its boundary without a permit (36 CFR § 7.83(c)(3)). When the park action was challenged, the court held that the NPS may regulate canoeing activities on state-owned rights-of-way and roads where such activities threaten to over-commercialize park lands. The court based its ruling on the well established power under the Property Clause of the federal government to regulate conduct on nonfederal land that affects the federal interest (*Free Enterprise Canoe Renters Ass'n of Missouri v. Watt*, 711 F.2d 852 (8th Cir. 1983)).
- New River Gorge National River objected to a state-sponsored black fly pesticide spraying program on nonfederally-owned land within park boundaries that would have violated 36 CFR § 2.1(a). When the park's objection was challenged, the court found that the Property Clause authorizes the Park Service to regulate and protect nonfederal lands within a federal preserve. (*U.S. v. Moore*, 640 F. Supp. 164 (S.D.W.Va. 1986)).

Frequently Asked Questions Beach Rules at Indiana Dunes National Lakeshore

Indiana Dunes National Lakeshore is part of the National Park System, just like such famous parks as Yellowstone and Grand Canyon. Rules and regulations that apply to national parks are often different from those that apply to state or county parks. The National Park Service (NPS) has prepared this list of questions and answers will help you plan for a safe and enjoyable visit to the park. You can find most rules in Title 36 of the Code of Federal Regulations, abbreviated as 36CFR. You can find this online at <http://www.access.gpo.gov/nara/cfr>. You should also read the Superintendent's Compendium which list rules specific to Indiana Dunes National Lakeshore. We have posted this document at www.nps.gov/indu/parkmgmt/lawsandpolicies.htm

The rules and regulations are for your safety and the protection of park resources. We want you to have a safe and enjoyable visit to Indiana Dunes National Lakeshore.

1. Q. Where do park regulations apply?

A. Park regulations apply to all areas of park-administered property inside the boundary. While some lands inside the park are not owned by the National Park Service, some regulations apply to non-federal land.

36 CFR 1.2

2. Q. Where is the boundary of the national lakeshore beach?

A. Succinctly, these are the boundaries of the national lakeshore along the coast are:

- At all areas where the national lakeshore is along Lake Michigan, the southernmost boundary is a platted line as described in Federal Register notices.
- At all areas where the national lakeshore is along Lake Michigan, the northernmost boundary is 300 feet from "the shoreline of Lake Michigan."

Generally speaking, these areas are:

4. From the east side of the U.S. Steel facility in Gary to Lake Street in Gary, (approximately one linear mile). The northern boundary is 300 feet from the shoreline and the southern boundary is above the Ordinary High Water Mark (OHW).
5. From County Line Road in Gary to the west bank of the Burns Waterway (approximately 2.25 miles). The northern boundary is 300 feet from the shoreline and the southern boundary is above the Ordinary High Water Mark.
6. From the east side of the Bailly Generating Station to west side of the Michigan City Generating Station (approximately 11.4 miles). The northern boundary is 300 feet from the shoreline and the southern boundary is above the Ordinary High Water Mark.

In all these areas, the national lakeshore includes the area from the Ordinary High Watermark (OHW) of Lake Michigan into the lake for a distance of three hundred feet from the edge of the water. In some of these areas, the national lakeshore includes some land above OHW. In other areas, such as the shore of Indiana Dunes State Park, Ogden Dunes, Dune Acres, and

Porter, there is a mixture of federal and non-federal land. Most federal regulations do not apply above OHW in the areas where the National Park Service does not own land in fee or in less-than fee. In all areas, the beach below Ordinary High Water is open to public use. The OHW is static at 581.5 feet International Great Lakes Datum (IGLD). Or, roughly, 581.5 feet above sea level. For example, if the lake level of Lake Michigan was 578.5 feet, the OHW would be 3 feet higher than the lake.

3. Q. How were the national lakeshore boundaries determined?

A. The boundaries of the national lakeshore are established by Congress. Congress included the 300-foot area in the lake so that the National Park Service could protect public safety. In the Senate Report that accompanied the law, the reason for the boundary in the lake was explained:

“In addition the Committee extended the present boundaries of the Lakeshore three hundred feet into Lake Michigan (approximately 542 acres) in order to provide for better management of shoreline recreation and activities on the Lake. At present the Park Service has difficulty in regulating boating and protecting swimmers. (Senate Report No. 94-1189, dated August 30, 1976)

4. Q. When is the beach open?

A. All NPS-owned beaches are open from sunrise to sunset. The parking lot at Lakeview is open until 11:00 p.m. Most other parking lots are open from 7:00 a.m. until 30 minutes after sunset. The park is open every day, including holidays.

5. Q. Where can I walk my dog on the beach?

A. Most of the beach is open to pets. You may not have a pet at the West Beach, Portage Lakefront and Porter Beach areas. You must have pets under control at all times and you are required to clean up after your pet. All pets must be on a leash no longer than six feet at all times. Owners must be holding and controlling the leash at all times.

36 CFR 2.15

6. Q. It’s a lot of trouble to bring things to the beach; can I leave them there for my next visit?

A. Unattended property, owned by an individual, group or town, may not be left on federal property. Any property stored at a beach must remain outside of federal land. Property left for more than 24 hours is subject to removal at the expense of the owner. This regulation applies on all federal land within the park boundary and on the beach below Ordinary High Water.

36 CFR 2.22

7. Q. Where can I park?

A. On warm days, the parking lots fill early and stay full. Visitors should arrive early. Many of our access points are near residential areas. Parking is limited to the designated spaces in the parking lots. You may not park along roadsides, on vegetated areas or in private yards. Unlawfully parked cars are subject to removal.

8. Q. Can I drink alcohol on the beach?

A. You may consume alcoholic beverages in most areas of the park if you are at least 21 years old. Regulations prohibit alcohol at West Beach, Porter Beach, Portage Lakefront and Riverwalk and Dunewood Campground. For safety reasons, we do not permit glass on the beach. Park staff strictly enforces the possession of alcohol in the closed areas and by minors and juveniles.

9. Q. Where can I ride my personal watercraft (PWC)?

A. Federal regulations do not permit this category of watercraft (Jet Skis, Waverunners, etc.) in any area of the national lakeshore. Please see the description of the park boundary for details. Generally, you cannot use a personal watercraft (PWC) anywhere within 300 feet of shore from the NIPSCO Bailly Generating Station to Mount Baldy, or from the Porter/Lake County line to the west side of Burns Waterway, or from U.S. Steel in Gary to the beach west of Lake Street in Gary.

Operators may use their personal watercraft outside of the boundary in accordance with applicable state law and U.S. Coast Guard regulations. PWCs may be used to enter and exit Burns Waterway as long as the user goes east upon exiting or remains 300 feet from the shore if going west from the mouth of the Waterway.

Personal watercraft cannot be launched, used, stored, or beached at any shoreline location within Indiana Dunes National Lakeshore. This includes all beaches along the shores of Ogden Dunes, Dune Acres, Porter, and Beverly Shores. It also includes the portions of shore in Michigan City, Burns Harbor, Portage, and Gary that are within Indiana Dunes National Lakeshore.

36 CFR 3.9

10. Q. Can I water-ski in the park?

A. Federal regulations prohibit water-skiing within the boundary of the park. This includes towing tubes, parasails, or any other device. As noted in Question #2, this means any area within 300 feet of shore from the NIPSCO Bailly Generating Station to Mount Baldy, or from the Porter/Lake County line to the west side of Burns Waterway, or from U.S. Steel in Gary to the beach west of Lake Street in Gary.

36 CFR 3.12

11. Q. Can I launch my boat from the beach?

A. You may launch and recover unpowered boats (canoes, kayaks, etc.) from any beach, by hand, except the West Beach area (a designated swimming area). Boaters may not launch, beach, or recover powerboats (watercraft with mechanical propulsion) anywhere in the boundaries as described in Question #2. Boats cannot be launched using a trailer at anywhere within the national lakeshore boundaries.

36 CFR 3.8

12. Q. Can I boat into the shore?

A. You can boat into the shore at any place except West Beach. However, you must anchor offshore. Landing your boat on the beach is not allowed. Boating into the shore is also restricted at Indiana Dunes State Park and you should check with them for current regulations.

13. Q. Where can I fish?

A. You may fish in all park waters except at West Beach. A valid Indiana fishing license is required.

14. Q. Is there a place to camp on the beach?

A. We do not have any approved beach camping areas. People are welcome to camp at the Dunewood Campground, about one-mile from the beach. It is located near the intersection of Highway 12 and Broadway, near Beverly Shores. The state park has a campground a short distance from the beach.

15. Q. Can I have a fire on the beach?

A. Fires are limited to approved camp and cooking fires in the fire rings at Dunewood Campground and in picnic area grills. During smelt season, a permit is available that allows for small warming fires in approved containers for those actively fishing. Only those actively smelt fishing may utilize this permit. Outside of the approved smelt fire permit, people may not light or maintain a fire on the federally-managed beaches.

36 CFR 2.13

16. Q. Can I use fireworks to the beach?

A. Individuals, groups, organizations or towns may not possess or use fireworks within the park. People may not pollute the park with fireworks debris by launching from adjacent private or town areas so that the fallout enters into the park, including Lake Michigan. Fireworks are not permitted on any beaches in the areas described in Question #2.

36 CFR 2.38

17. Q. Can I drive an ATV on the beach?

A. All motorized vehicles must remain on designated roads, no off-roading or beach driving is allowed anywhere in the national lakeshore. The superintendent must approve official use of vehicles off roads or on the federally-managed beach, including the area below OHW. This includes the operation of all-terrain vehicles (ATVs) on any park beach. This prohibition does not apply to bona fide emergency vehicles operated by a government agency during an emergency.

36 CFR 4.10

18. Can I use a metal detector on the beach?

A. No. Metal detectors are prohibited on any federally-managed land within Indiana Dunes National Lakeshore.

36 CFR 2.1

October 2012

19. Q. How do I report a problem or a crime?

A. National Park Service employees staff an emergency dispatch center at all times. We encourage people to report emergencies and violations of regulations by calling our toll-free line at 1-800-PARKTIP (727-5847). Calling 911 may route your call to another dispatch center and your call may be delayed or may not reach the national lakeshore emergency center at all. Using 1-800-PARKTIP (727-5847) assures that you will reach the park emergency center.

20. Q. How do I find out more about beach regulations?

A. There are numerous regulations that apply within a national park. You can find these within Title 36 of the Code of Federal Regulations. The Superintendent's Compendium more clearly defines some of these regulations. Both of these documents can be found at - <http://www.nps.gov/indu/parkmgmt/lawsandpolicies.htm>. You may also contact the Chief Ranger at 219-395-1653.