



National Park Service
U.S. Department of the Interior

Niobrara National
Scenic River

214 W. U.S. Hwy 20
Valentine, NE 69201

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

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Approved:

Stephen G. Thede, Superintendent
Date: January 12, 2016

A. INTRODUCTION

1. Superintendent's Compendium Described

The Superintendent's Compendium is the summary of park specific rules implemented under 36 Code of Federal Regulations (36 CFR). It serves as public notice, identifies areas closed for public use, provides a list of activities requiring either a special use permit or reservation, and elaborates on public use and resource protection regulations pertaining specifically to the administration of the park. The Superintendent's Compendium does not repeat regulations found in 36 CFR and other United States Code and CFR Titles, which are enforced without further elaboration at the park level.

The regulations contained in 36 CFR, Parts 1-7, are the basic mechanism used by the National Park Service (NPS) to preserve and protect the natural and cultural resources of the park and to protect visitors and property within the park. Parts 1 through 6 are general regulations applicable to all areas of the National Park system, and Part 7 contains special regulations specific to individual parks. Each of these Parts has many sections and subsections articulating specific provisions. Within some of these Part 1-7 sections and subsections, the Superintendent is granted discretionary authority to develop local rules to be responsive to the needs of a specific park resource or activity, park plan, program, and/or special needs of the general public.

As an example, 36 CFR 1.5(a) *Closures and Public Use Limits* provides the Superintendent certain discretion in allowing or disallowing certain activities. The authority granted by the Section, however, requires the Superintendent to comply with the Administrative Procedures Act (6 USC Section 551), which requires public notice on actions with major impact on visitor use patterns, park resources or those that are highly controversial in nature.

Another example is 36 CFR 1.6 *Permits*, which allows the Superintendent to require a permit for certain uses and activities in the park. This Section, however, requires that a list of activities needing a permit (and a fee schedule for the various types of permits) be maintained by the park.

A final example is 36 CFR 2.1(c) (1) *Preservation of Natural, Cultural and Archeological Resources*, which provides the Superintendent the authority to designate certain fruits, nuts, berries or unoccupied seashells which may be gathered by hand for personal use or consumption. This activity can occur, however, only if a written determination shows that the allowed activity does not adversely affect park wildlife, the reproductive potential of a plant species, or otherwise adversely affect park resources.

This Compendium should be used in conjunction with Title 36 CFR, Parts 1-7, to more fully understand the regulations governing the use and enjoyment of all the areas of the national Park System.

A copy of Title 36, CFR, can be purchased from the U.S. Government Printing Office at:
Superintendent of Documents
P.O. Box 371954
Pittsburgh, PA 15250-7954

The CFR is also available on the Internet at:
http://www.access.gpo.gov/nara/cfr/waisidx_05/36cfrv1_05.html

2. Laws and Policies Allowing the Superintendent to Develop This Compendium

The National Park Service (NPS) is granted broad statutory authority under 16 United States Code (U.S.C.) Section 1 *et seq.* (Organic Act of 1916, as amended) to "...regulate the use of the Federal areas known as national parks, monuments, and reservations...by such means and measures as conform to the fundamental purposes of the said parks...which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment for future generations" (16 U.S.C. Section 1). In addition, the NPS Organic Act allows the NPS, through the Secretary of the Interior, to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments, and reservations under the jurisdiction of the National Park Service" (16 U.S.C. Section 3).

In 1970, Congress amended the NPS Organic Act to clarify its intentions as to the overall mission of the NPS. Through the General Authorities Act of 1970 (16 U.S.C. Sections 1a1-1a8), Congress brought all areas administered by the NPS into one National Park System and directed the NPS to manage all areas under its administration consistent with the Organic Act of 1916.

In 1978, Congress amended the General Authorities Act of 1970 and reasserted System-wide the high standard of protection defined in the original Organic Act by stating "Congress further reaffirms, declares, and directs that the promotion and regulation of the various areas of the National Park System, as defined by Section 1 of this Title, shall be consistent with and founded in the purpose established by Section 1 of this Title, to the common benefit of all people of the United States."

16 U.S.C. Section 1c defines the National Park System as "...any areas of land and water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes."

In addition to the above statutory authority, the Superintendent is guided by established NPS policy as found in the *NPS Management Policies* (2006). The Superintendent is also guided by more specific policies promulgated by the Director, National Park Service, in the form of Director's Orders. As stated in the Management Policies, the primary responsibility of the NPS is to protect and preserve our national natural and cultural resources while providing for the enjoyment of these resources by visitor and other users, as long as use does not impair specific park resources or overall visitor experience. The appropriateness of any particular visitor use or recreational experience is resource-based and will vary from park to park; therefore, a use or activity that is appropriate in one park area may not be appropriate in another. The Superintendent is directed to analyze overall park use and determine if any particular use is appropriate. Where conflict arises between use and resource protection, where the Superintendent has a reasonable basis to believe a resource is or would become impaired, than that Superintendent is obliged to place limitations on public use.

3. Consistency of This Compendium with Applicable Federal Law and Requirements

The Superintendent's Compendium is not considered a significant rule requiring review by the Office of Management and Budget under Executive Order 12866. In addition, this Compendium will not have a significant economic effect on a number of small entities nor impose a significant cost on any local, state or tribal government or private organization, and therefore does not fall under the requirements of either the Regulatory Flexibility Act or the Unfunded Mandates Reform Act.

The actions and requirements described in this Compendium are found to be categorically excluded from further compliance with the procedural requirements of the National Environmental Policy Act (NEPA) in Department of the Interior (DOI) Guidelines 516 DM 6 and as such, an Environmental Assessment will not be prepared.

4. Development of the Requirements of the Superintendent's Compendium

As outlined above, the NPS has broad authority and responsibility to determine what types of uses and activities are appropriate in any particular National Park System area. The requirements of the Superintendent's Compendium are developed through an analysis and determination process. The decision criteria used during this process are:

- Is there use or activity consistent with the NPS Organic Act and NPS policy?
- Is the use or activity consistent and compatible with the park's enabling legislation, management objectives, and corresponding management plans?
- Will the use or activity damage the park's protected natural and cultural resources and other protected values?
- Will the use or activity disturb or be in conflict with wildlife, vegetation, and environmental protection actions and values?
- Will the use or activity conflict with or be incompatible with traditional park uses and activities?
- Will the use or activity compromise employee or public safety?

5. Applicability of the Compendium

The rules contained in this Compendium apply to all persons entering, using, visiting or otherwise present on Federally owned lands, including submerged lands, and waters administered by the NPS within the legislative boundaries of the park. This includes all waters subject to the jurisdiction of the United States, including all navigable waters.

6. Enforcement of Compendium Requirements

NPS Law Enforcement Park Rangers enforce the requirements of the United State Code, 36 CFR, and this Superintendent's Compendium.

7. Penalties for Not Adhering to the Compendium Requirements

A person who violates any provision of the regulations found in 36 CFR, Parts 1-7, or provisions of this Compendium, is subject to a fine as provided by law (18 U.S.C. 3571) up to \$5,000 for individuals and \$10,000 for organizations, or by imprisonment not exceeding six months (18 U.S.C. 3559), or both, and shall be adjudged to pay all court costs associated with any court proceedings. You may receive a list of fines associated with any particular provision by contacting the Chief Ranger at the park address found below.

8. Comments on the Compendium

The Compendium is reviewed annually and revised as necessary. The park welcomes comments about its program and activities at any time.

Written comments on the Compendium may be submitted to:

Superintendent
Niobrara National Scenic River
214 West Highway 20
Valentine, NE 69201

9. Effective Date of the Superintendent Compendium

The Superintendent's Compendium is effective on the approval date listed on the first page of this document, and remains in effect until revised for a period up to one year.

10. Additional Information

Some of the terms used in this Compendium may have specific meaning defined in 36 CFR 1.4 *Definitions*.

11. Availability

Copies of the Compendium are available at 214 West Highway 20, Valentine, NE 69201. It may also be found at www.nps.gov/niob

B. SUPERINTENDENT'S COMPENDIUM

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 waters administered by and lands owned or administered by the National Park Service (NPS), within the boundaries of Niobrara National Scenic River. Note: These do not apply to lands within the boundary of the Niobrara National Scenic River managed by private individuals or organizations, or other state or federal agencies. Unless otherwise stated, these regulatory provisions apply in addition to the requirements contained in 36 CFR, Chapter 1, Parts 1-7.

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)(2) **The following restrictions and/or conditions are in effect for the specific uses or activities noted for those portions of the Niobrara River extending from the eastern boundary of Fort Niobrara National Wildlife Refuge downstream to the Norden Bridge:**

Closures and Limitations:

- **Connecting vessels together while underway.** The practice of fastening together vessels while adrift is limited to a maximum group size of ten (10) people from May 1 through September 30. Examples of maximum vessel configurations include ten (10) individual person tubes, or three (3) giant tubes (tubes greater than 6 feet in diameter), or combination thereof. Individual watercraft and inflatable rafts designed to safely transport more than 10 passengers are permitted, but may not be secured to any other vessel while underway, with the exception that one cooler (non-passenger) tube may be tied to inflatable rafts. No more than five (5) canoes and/or kayaks may be fastened together while afloat. A maximum of three cooler tubes may be tied to any flotilla of vessels.
 - ***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 may remain submerged underneath, increasing the likelihood 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 blocking access by other visitors. Rangers have witnessed children and adults fall from flotillas and be swept beneath them. River users in canoes have also been forced underwater after capsizing and a flotilla has floated over them.*
- **Launching, landing, or operating an unmanned aircraft** from or on lands and waters administered by the National Park Service within the boundaries of Niobrara National Scenic River is prohibited except as approved in writing by the superintendent.

Definition: *The term "unmanned aircraft" means a device that is used or intended to be used for flight in the air without the possibility of direct human intervention from within or on the*

device, and the associated operational elements and components that are required for the pilot or system operator in command to operate or control the device (such as cameras, sensors, communication links.) This term includes all types of devices that meet this definition (e.g. model airplanes, quadcopters, drones) that are used for any purpose, including for recreation or commerce.

- **Determination:** Until the NPS can determine whether specific uses of unmanned aircraft are appropriate and will not cause unacceptable impacts on park resources and values, Niobrara National Scenic River is closed to the use of these devices. The use of unmanned aircraft within the boundaries of Niobrara National Scenic River has the potential to negatively impact the privacy of adjacent landowners along the river, including potentially creating a corridor of immunity over the water where adjacent landowners that did not want unmanned aircraft to operate would not be able to exclude them. It should be noted however, that this action does not prohibit an adjacent landowner from operating an unmanned aircraft. Unmanned aircraft operations could harm visitors, disturb wildlife, impact viewsheds, cause excessive noise, and interfere with other visitors' enjoyment of the area.

This closure is being implemented as an interim measure while this new use can be properly evaluated. A less restrictive approach is not appropriate at this time due to the impacts the devices could potentially present to visitor safety, park values, and to park resources. The interim closure will safeguard these values while the NPS considers how to address this new use on a long-term basis.

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
214 West Highway 20
Valentine, NE, 69201
402-376-1901 phone
402-376-1949 fax

The following is a compilation of those activities on waters administered by and lands owned or administered by the NPS, within the boundaries of Niobrara National Scenic River for which a permit from the superintendent is required. These do not apply to lands within the boundary of the Niobrara National Scenic River managed by private individuals or organizations, or other state or federal agencies.

- §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).
- §2.50(a) Conducting a sports event, pageant, regatta, public spectator attraction, entertainment, ceremony, and similar events.
- §2.51(e) Administrative offices of Niobrara National Scenic River are not available for public assemblies, meetings, gatherings, demonstrations, parades and other public expression 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 (vessels), or other articles of commerce or models for the purpose of commercial advertising.

III. GENERAL REGULATIONS

36 CFR §2.4 – WEAPONS, TRAPS, AND NETS

- (h) Notwithstanding any other provision in this Chapter, a person may possess, carry, and transport concealed, loaded, and operable firearms within a national park area in accordance with the laws of the state in which the national park area, or that portion thereof, is located, except as otherwise prohibited by applicable Federal law.

This authority does not extend to Federal facilities that are leased by the National Park Service (18 U.S.C. 930(a)). Federal facilities include:

- Niobrara National Scenic River Headquarters

DETERMINATION: Park regulation cannot be less restrictive than United States Code.