

Authority of Federal Land Management Agencies to Restrict Movement of Watercraft

Stephanie Showalter Otts
National Sea Grant Law Center
University of Mississippi School of Law
GSARP/WRP Meeting
Houston, TX • Sept. 17, 2014

PREVENTION

Restricting Movement onto Federal Land

U.S. Forest Service

Statute:

The Organic Administration Act: Secretary of Agriculture authorized to take steps to protect “against destruction by fire and depredations upon the public forests and national forests” and “to preserve the forests thereon from destruction.” (16 U.S.C. § 551).

Regulation:

Forest Service may prohibit by order “[e]ntering or using a developed recreation site or portion thereof.” (36 C.F.R. § 261.58(b)).

Unit Management

On December 31, 2011, the Forest Supervisor for the Arapaho and Roosevelt National Forests and the Pawnee National Grassland issued an Order that prohibited “entering or using the Restricted Area while in possession of a motorized or trailered watercraft.”

National Park Service

Statute

“The Secretary of the Interior shall 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. § 3).

Regulation

If necessary to maintain public health or safety, protect environmental or scenic values, or protect natural or cultural resources, Park Superintendents “may close all or a portion of a park to public use or to a specific use or activity, or impose conditions or restrictions on an activity.” (36 C.F.R. § 1.5(a)(1)).

Unit Management

The 2014 Superintendent’s Compendium for Glacier Bay National Park requires individuals obtain a permit before launching a motorized or trailered vessel in park waters. To qualify for a launch permit, vessels must be certified to be free of aquatic invasive species.

FWS – Wildlife Refuges

Statute

Congress directed the Secretary of Interior to, among other things, “ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans.” (16 U.S.C. § 668dd(a)(4)(B)).

Regulation

Refuge managers may close or curtail refuge uses within an area opened to public access to protect the resources of the area. (50 C.F.R. § 25.21(e)).

Unit Management

The Missisquoi National Wildlife Refuge in Vermont imposes conditions through its Special Use Permit for commercial bait dealers: “The permittee must keep all equipment used clean so as not to introduce aquatic nuisance species. The permittee must not clean or empty tanks and other equipment used into refuge waters.” (50 C.F.R. § 32.65 (D)(9)(vii)).

Bureau of Land Management

Statute

FLPMA declares “the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; ...” (43 U.S.C. § 1701(a)(8)).

Regulation

To protect persons, property, and public lands and resources, the authorized officer may issue an order to close or restrict use of designated public lands. (43 C.F.R. § 8364.1(a)).

Unit Management

On July 21, 2011, BLM issued supplementary rule requiring anyone using, feeding, or storing forage or straw on BLM-administered land in Idaho to use certified noxious-weed-free forage. (76 Fed. Reg. 43706).

Bureau of Reclamation

Statute

Under the Reclamation Act of 1902, the Secretary of Interior “is authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying out the provisions of this Act into full force and effect.” (43 U.S.C. § 373).

Regulation

Bureau may close all or portions of Reclamation facilities, lands, and waterbodies for “Protection of public health and safety, cultural resources, natural resources, scenic values, or scientific research activities.” (43 C.F.R. § 432.12(a)(2)).

Unit Management

????? – 2007 Memo to Lower Colorado Region Employees requiring cleaning of equipment being transported between water bodies; Inspection and Cleaning Manual for Equipment and Vehicles to Prevent the Spread of Invasive Species (2012)

CONTAINMENT

Restricting Movement off Federal Land

Same Authorities? –
containment policies and actions
can protect other units and
federal lands

Other Authorities? - 16 U.S.C. §
668dd(c) imposes a blanket
prohibition on the removal of plants
and animals from Wildlife Refuge
System lands.



E.O. 13112? – Federal agencies are to
use programs and authorities to control
invasive species. Control defined to
include “preventing spread of invasive
species from areas where they are
present.”

Agency Policies? – DOI’s
Integrated Pest Management
Policy (517 DM 1), FWS
Fisheries Program’s HAACP
Plans (750 FW 1).

Questions? Thoughts? Suggestions?

Stephanie Showalter Otts
Director, National Sea Grant Law Center
University of Mississippi School of Law

(662) 915-7714

sshowalt@olemiss.edu