

**PREAMBLE
TO THE
SUPERINTENDENT’S COMPENDIUM
2008**

GATES OF THE ARCTIC NATIONAL PARK AND PRESERVE

PREAMBLE

The proposed compendium was available for comment from January 1 – February 15, 2008. The following preamble addresses comments received by the park on the proposed compendium. Groups or organizations who commented are identified in the discussion.

The park received comments from the State of Alaska.

Determinations of need

The State of Alaska recommended incorporating the justification for new provisions into the compendium. The NPS agrees with this recommendation. Justifications for new compendium entries are attached as an appendix or included as a brief statement below the entry.

1.6 Compilation of activities requiring a permit

The State of Alaska recommended changing the entry recording towing a person using a parasail, hang-glider, or other airborne device to add the phrase “behind a boat.” Since this phrase is not used in the regulation, the NPS is not adopting this suggestion.

2.10(d) Food storage – designated areas and methods

The State of Alaska recommended that adding a provision enabling the park superintendent to identify methods, as well as items, approved for food storage. The NPS has adopted this recommendation.

Changes to implement new regulations

The park is also making changes to implement a final rule published on January 18, 2008 that expanded the authorization for subsistence use of standing timber under 36 CFR 13.485(a).

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National Park Service (NPS) regulations applicable to the protection and equitable public use of units of the National Park System grant specified authorities to a park superintendent to allow or restrict certain activities. NPS regulations are found in Titles 36 and 43 of the Code of Federal Regulations (CFR) and created under authority and responsibility granted the Secretary of Interior in Titles 16 and 18 of the United States Code. The following compendium comprises a listing of NPS regulations that provide the Superintendent with discretionary authority to make designations or impose public use restrictions or conditions in park areas. The applicability and scope of the compendium is articulated in 36 CFR Sections 1.2 and 13.2, and 43 CFR Section 36.1.

The larger body of NPS regulations that do not provide discretionary authority to the Superintendent is not cited in this compendium. A complete and accurate picture of regulations governing use and protection of the unit can only be gained by viewing this compendium in context with the full body of applicable regulations found in Titles 36 and 43 CFR. *Please contact Gates of the Arctic National Park and Preserve, Bettles, Alaska at (907)692-5494 for questions relating to information provided in this compendium.*

TITLE 36 CODE OF FEDERAL REGULATIONS

PART 1. GENERAL PROVISIONS

1.5 Closures and public use limits

(a)(1) Visiting hours, public use limits, closures

See specific sections in this document for additional information regarding visiting hours, public use limits, and closures.

(a)(2) Designated areas for specific use or activity or conditions

See specific sections in this document for additional information regarding designated areas and conditions for engaging in certain activities.

1.6(f) Compilation of activities requiring a permit

- Scientific research, 1.5
- Collecting research specimens, 2.5
- Operating a power saw in developed areas, 2.12(a)(2)
- Operating a portable motor or engine in undeveloped areas, 2.12(a)(3)
- Operating a public address system, 2.12(a)(4)
- Air delivery, 2.17(a)(3)
- Noncommercial soliciting, 2.37
- Using, possessing, storing, or transporting explosives, blasting agents, or explosive materials, 2.38(a)
- Using or possessing fireworks and firecrackers, 2.38(b)
- Special events, 2.50(a)

- Public assemblies and meetings, 2.51(a)
- Sale and distribution of printed matter, 2.52(a)
- Grazing, 2.60(a)(1),(2); reindeer grazing, 2.60(a)(1), re: 16 USC 410hh, 25 USC 500
- Residing on federal lands, 2.61(a)
- Installing a monument or other commemorative installation, 2.62(a)
- Towing a person using a parasail, hang glider, or other airborne device, 3.12(b)
- Removing sunken, grounded, or disabled vessels, 3.14(a)
- Operating a submersible, 3.19
- Commercial notices or advertisements, 5.1
- Commercial operations, 5.3
- Commercial photography or filming, 5.5
- Construction or repair of any building, structure, facility, road, trail, or airstrip on federal lands, 5.7
- Mining operations (9.9(a)) or an approved Plan of Operations (in lieu of permit)
- Cabins on federal lands, 13.100-13.188
- Subsistence use in Gates of the Arctic National Park by a person who does not live within the Park boundary or a resident zone community, 13.440(a)
- Using aircraft access for subsistence activities in the Park by residents of Anaktuvuk Pass, 13.450(a), (b)(1), 13.1004
- Cutting of live standing timber greater than 3 inches in diameter for non-commercial subsistence uses, 13.485(a)(1)
- Access to inholdings where access is not made by aircraft, snowmachine, motorboat or non-motorized surface transportation, 43 CFR 36.10(b)
- Salvaging, removing, possessing aircraft, 43 CFR 36.11 (f)(3)(ii)
- Helicopter landings, 43 CFR 36.11(f)(4)
- Off-road vehicle (ORV) use, 43 CFR 36.11(g)(2)
- Temporary access across federal land for survey, geophysical or exploratory work, 43 CFR 36.12(c)

PART 2. RESOURCE PROTECTION, PUBLIC USE AND RECREATION

2.1(a)(4) Designated areas for collection of dead wood on the ground for firewood

Superseded by 13.35(c)(4), 13.35(d), and 13.85(b).

2.1(a)(5) Designated areas and conditions for walking on, climbing, entering, ascending, descending, or traversing an archeological or cultural resource, monument, or statue

No designated areas or conditions.

2.1(b) Designated trails

No restrictions on walking or hiking.

2.1(c)(1)-(3) Designated fruits, nuts, berries, and unoccupied seashells to harvest by hand and collection restrictions

Superseded by 13.35(c) and 13.485(b).

2.2(d) Established conditions and procedures for transporting lawfully taken wildlife through park areas

See also 13.40(d)(5).

2.2(e) Designated areas for wildlife viewing with artificial light

No areas designated for closure.

2.3(d)(2) Fresh waters designated as open to bait fishing with live or dead minnows or other bait fish, amphibians, nonpreserved fish eggs or fish roe

No waters are designated as open to fishing with the types of bait identified above. Other types of bait may be used in accordance with state law. Subsistence fishing by federally qualified rural residents is allowed in accordance with 36 CFR part 13 and 50 CFR part 100.

2.4(a)(2)(i) Carrying, using, or possessing weapons at designated locations and times

See also 13.50(b)-(f).

2.10(a) Camping: conditions and permits

No established conditions or permits required.

Camping on gravel bars is encouraged to avoid damage to vegetation.

Superseded in part by 13.25.

Camping on gravel bars is consistent with the Leave No Trace principle of “travel and camp on durable surfaces” and is a widely recognized best practice.

2.10(d) Food storage: designated areas and methods

(1) Definition: A *bear resistant container* (BRC) means an item constructed to prevent access by a bear. BRC’s include—

- Items approved by the Department of Interior and Agriculture’s Interagency Grizzly Bear Committee (<http://www.fs.fed.us/r1/wildlife/igbc/>);
- Any additional items listed by the State of Alaska, Department of Fish and Game, Division of Wildlife Conservation (<http://www.wildlife.alaska.gov/aawildlife/containers.cfm#lightweight>), with the concurrence of the Superintendent; and
- Items or methods approved by the Superintendent.

(2) Throughout the park, all food (except legally taken game) and beverages, food and beverage containers, garbage, harvested fish and equipment used to cook or store food must be stored in a bear resistant container (BRC) or secured—

- Within a hard sided building;
- Within lockable and hard sided section of a vehicle, vessel, or aircraft; or
- By caching a minimum of 100 feet from camp and suspending at least 10 feet above the ground and 4 feet horizontally from a post, tree trunk or other object on a line or branch that will not support a bear’s weight.

- (3) This regulation does not apply to—
- Food that is being transported, consumed or prepared for consumption; and
 - Clean dishes and cooking equipment free of food orders.

The intent of these designations is to prevent bears and other wildlife from obtaining and habituating to food and garbage, thus protecting wildlife and park visitors alike. We strongly recommend that dishes and cooking equipment be securely stored; but clean and odor free items are not required to be stored in secure containers. Ice chests and coolers, tents, dry bags or stuff sacks, plastic packing boxes (Totes, Action Packers, etc) and unmodified kayaks are not generally approved as BRC.

2.11 Picnicking: designated areas

Superseded by 13.26.

2.13(a)(1) Fires: designated areas and conditions

Designated Areas: Campfires are authorized in all areas without a permit. All trash (tin foil, burnt food, glass, and cans) must be removed from the fire site after use.

The intent of this requirement is to allow for fires in the backcountry while ensuring that resource impacts associated with fires are minimized. The use of fire pans and construction of fires on gravel bars is encouraged to ensure that permanent campfire sites and build up of ash piles will not occur.

2.14(a)(2) Sanitation and refuse: conditions using government receptacles

No conditions established at present. Dumping commercial, household, or industrial refuse, brought in from private or municipal property, in government receptacles is prohibited.

2.14(a)(5) Sanitation: designated areas for bathing and washing

No designated areas. The area does not have any public water facilities.

2.14(a)(7) Sanitation: designated areas for disposal of fish remains

Fish entrails may be deposited on land along the Kobuk River drainage, as long as they are deposited greater than 100 feet from a campsite.

The intent of this condition is to respect local native custom and culture in which fish entrails are left on land for other animals to scavenge.

2.14(a)(9) Sanitation: designated areas for disposal of human waste in undeveloped areas

Solid human waste will either be removed as trash or deposited in cat-holes dug at least 100 feet from any surface freshwater source, shoreline, campsite or trail. Cat-holes must be at least six inches deep.

The intent of these conditions is to protect the public from exposure to health, safety and disease risks and to maintain pristine water quality. The park recommends that human waste be deposited at least 200 feet from any surface, freshwater source, which

represents the national, interagency standard for the best Leave No Trace practices regarding human waste disposal in the field.

2.14(b) Sanitation: conditions concerning disposal, carrying out of human waste

See section 2.14(a)(9) above. Toilet paper should be packed out, or burned when fire hazard is low.

2.15(a)(1) Areas designated as closed to pets

No designated areas. Pets must be leashed or physically restrained at all times.

2.15(a)(3) Conditions for leaving pets unattended and tied to an object

No conditions at present.

Leaving pets unattended and tied to an object is prohibited.

2.15(a)(5) Pet excrement disposal conditions

No conditions at present.

2.15(b) Conditions for using dogs in support of hunting activities

No conditions at present.

2.16 (a)-(c) Horses and pack animals

Superseded by 43 CFR 36.11(e).

2.17(a)(1) Aircraft operation

Superseded by 43 CFR 36.11(f)(1).

Use of aircraft in the Park for subsistence purposes is prohibited under 36 CFR 13.450.

See also 13.450, 13.1004 regarding use of airplanes in the Park for subsistence by

Anaktuvuk Pass residents.

2.17(a)(2) Aircraft operation near docks, piers, swimming beaches and other designated areas

No areas prohibited.

2.17(c)(1) Conditions for removing downed aircraft

Superseded by 43 CFR 36.11(f)(3)(ii).

2.18(c) Snowmobiles: designated areas for use

No areas designated for snowmachine use.

Superseded in part by 43 CFR 36.11(c).

Superseded by 36 CFR 13.460 for subsistence uses.

2.19(b) The towing of persons on skis, sleds, or other sliding devices by motor vehicle or snowmobile is prohibited, except in designated areas or routes

No designated areas or routes.

2.20 Skating and skateboards

Superseded by 43 CFR 36.11(e).

2.21 Smoking

All park offices and visitor facilities are closed to smoking.

Smoking is prohibited within 100 feet of the park fuel and aviation gas storage facility.

These restrictions are intended to protect public safety from fire or explosion around fuel storage and dispensing facilities.

2.22 Property: leaving property unattended for longer than 24 hours

Superseded by 13.45.

2.35(a)(3)(i) Alcoholic beverages: areas designated as closed to consumption

No areas designated as closed.

2.38(b) Fireworks: permits, designated areas, and conditions

No areas designated for use of fireworks.

2.51(e) Public assemblies/meetings: designated areas for public assemblies

All areas open to public assemblies with a permit from the superintendent.

2.52(e) Sale and distribution of printed matter: areas designated for such use

All areas are open to distribution with a permit from the superintendent.

2.60(a)(3) Designated areas for grazing

Grazing of pack or saddle animals by private parties, not to exceed 14 days, is authorized without a permit in all areas. Any feed brought in must be weed free. Grazing in support of commercial operations is only allowed under permit from the superintendent.

These restrictions seek to lessen the impact of extended camps on vegetation.

2.62(b) Memorialization: designation of areas for scattering ashes

All areas are open to scattering of ashes without a permit.

PART 3. BOATING AND WATER USE ACTIVITIES

3.3 Permits

No permits required at present.

3.7 Personal Flotation Devices: designated times and/or activities

No designated times or activities. PFDs must be worn in accordance with 33 CFR part 175.

3.8(a)(2) Boating, prohibited operations: designated launching areas

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All areas are open to launching of boats.

3.8(a)(4) Operating a vessel in excess of designated length, width, or horsepower

No designations at present.

3.8(b)(3) Operating a vessel in excess of flat wake speed in designated areas

No designations areas.

3.12(a) Water skiing: designated waters

No areas designated open.

3.14(a) Conditions for removing sunken, grounded, or disabled vessels

A permit is required from the Superintendent before sunken, grounded, or disabled vessels may be removed from the park; violation of the terms and conditions of the permit is prohibited.

This requirement allows the Superintendent to establish terms and conditions for salvage operations as necessary to protect resources, provide for public safety, and minimize impacts on visitors.

3.16 Swimming and wading: areas designated as closed

All areas are open to swimming and wading.

3.17(a) Designated swimming areas and beaches

No designated areas.

3.17(c) Use or possession of flotation devices, glass containers, kites, or incompatible activities in swimming areas or beaches

No restrictions at present.

3.18(a) SCUBA and underwater diving: closures and restrictions

No closures or restrictions at present.

PART 4. VEHICLES AND TRAFFIC SAFETY

4.10 Routes or areas designated for off-road motor vehicle use in Preserves

No routes or areas designated.

See also 43 CFR 36.11(g).

4.11(a) Load weight and size limits: permit requirements and restrictive conditions

No restrictions at present.

4.30(a) Routes designated as open to bicycles

Superseded by 43 CFR 36.11(e).

4.30(d)(1) Wilderness closed to bicycle use

Superseded by 43 CFR 36.11(e).

4.31 Hitchhiking: designated areas

All areas are open to hitchhiking.

PART 5. COMMERCIAL AND PRIVATE OPERATIONS

5.7 Construction of buildings, roads, trails, airstrips, or other facilities

Maintenance of established landing strips utilizing non-motorized hand tools is not considered construction or repair and no permit is required.

PART 13. ALASKA REGULATIONS

13.25(a) Temporary closures and restrictions to camping

No closures or restrictions at present.

13.25(b) Site time limits: authorization to exceed 14 day limit at one location

No general exceptions at present.

13.25(c) Designated campgrounds: restrictions, terms, and conditions

No designated campgrounds.

13.26 Picnicking-areas where prohibited or otherwise restricted

No restrictions.

13.50(b) Temporary closures or restrictions to carrying, possessing, or using firearms

There are no additional restrictions.

13.35(d) Collection of dead standing wood: areas designated as open and conditions for collection

No designated areas.

13.35(f)(1) Natural features: size and quantity restrictions for collection

No restrictions at present.

13.35(f)(2) Natural features: closures or restrictions due to adverse impacts

No closures or restrictions at present.

13.40(e) Temporary closures or restrictions to the taking of fish and wildlife

No closures at present. See applicable State of Alaska hunting regulations. Sport hunting is prohibited in Gates of the Arctic National Park.

13.45(b)(1)-(6) Exceptions to unattended or abandoned property

Subsistence users are exempt from the requirements in (b)(1)-(6). Other authorizations for exceptions for unattended or abandoned property are made on a case by case basis. Contact park headquarters for more information.

13.45(c) Designated areas where personal property may not be left unattended for any time period, limits on amounts and types, manner in which property is stored

No designated areas.

13.50(h) Facility closures and restrictions

No restrictions at present.

13.46 Closures or restrictions to the use of snowmobiles, motorboats, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses

See also 36 CFR 2.16, 2.17, 2.18, 3.6, 4.10, 4.30; 43 CFR 36.11(c)-(e).

13.122 Established conditions for removal of cabin for which a cabin permit has been denied, expired, or revoked

No conditions established at present (may require access permit).

13.160 Designated existing cabins, shelters or temporary facilities that may be shared for subsistence uses without a permit

No designations at present.

13.166 Established conditions and standards governing the use and construction of temporary structures and facilities for subsistence purposes, published annually

No conditions or standards established at present.

13.170 Designated cabins or other structures for general public use

No cabins or other structures designated for public use.

NPS cabins are currently available for emergency use only.

13.172 Established conditions and allocation system to manage the use of designated public use cabins

Not applicable.

13.188(b) Established conditions for removal of temporary facility used in excess of 14 days

Individuals must remove facility, all personal property, and return the site to its natural condition.

These conditions are intended to protect the park from impacts to vegetation and soil and to ensure that personal items are not left in the park.

13.485(a)(1) Permit specifications for harvesting standing timber greater than 3" diameter for subsistence purposes (house logs & firewood)

The superintendent may allow subsistence harvest of trees greater than 3" subject to the terms and conditions of a permit.

The above restriction serves to minimize impact to park resources, ensure that natural biodegradation processes are unimpaired, and protect against overharvest.

13.485(a)(2) Restrictions on cutting of timber less than 3" in diameter for subsistence purposes

No restrictions at present.

43 CFR, PART 36 TRANSPORTATION AND UTILITY SYSTEMS (Access Regulations)

36.11(c) Temporary closures to the use of snowmachines for traditional activities

No closures at present.

See also 2.18.

36.11(d) Temporary closures to the use of motorboats

No closures at present.

See also 3.3, 3.6.

36.11(e) Temporary closures to the use of non-motorized surface transportation

No closures at present.

See also 2.16, 3.3, 3.6.

36.11(f)(1) Temporary closures to landing fixed-wing aircraft

No closures at present.

36.11(f)(3)(ii) Established procedure for salvaging and removing downed aircraft

A permit is required from the superintendent before downed aircraft may be salvaged and removed from the NPS lands; violation of the terms and conditions of the permit is prohibited.

This requirement allows the superintendent to establish terms and conditions for salvage operations as necessary to protect resources, provide for public safety, and minimize impacts on visitors.

36.11(g)(2) Use of off-road vehicles (ORV) on existing trails

No trails designated for ORV use except those designated in the Anaktuvuk Pass Land Exchange Legislation. Contact park headquarters for further information on these designated trails. See also 4.10.

This compendium is approved and rescinds all previous compendiums issued for Gates of the Arctic National Park and Preserve.

Superintendent

Date

Attachment: 2.10 Food Storage Determination

Attachment: 3.14 Conditions for removing sunken, grounded, or disabled vessels

Determination of Need for a Restriction, Condition, Public Use Limit, or Closure

Subject: Food Storage

Pursuant to Title 36 of the Code of Federal Regulations, Section 1.5 (c) and 2.10 (d), the Superintendent of Gates of the Arctic National Park & Preserve has determined that in order to protect public safety and prevent adverse impacts to wildlife, conditions are placed on storage of food, garbage, lawfully taken fish or wildlife, and equipment used to cook or store food throughout the park.

The reasons for this restriction are as follows:

1. Wildlife in a natural ecosystem is adapted to exist on natural food source. Obtaining human food may adversely affect behavior and nutrition of wildlife.
2. Both black and brown bears are common throughout the parklands and are readily attracted to even small quantities of human food. They are very curious and intelligent, and will commonly open or enter containers, tents, and structures.
3. Bears are extremely susceptible to conditioning to human food sources. Once they have learned to associate a site or item (e.g. tent, kayak, boat, etc.) with acquisition of food, they may return to that source repeatedly for further food rewards.
4. It does not matter whether the material is fresh, dry, powdered, canned, etc. Once a curious bear has obtained a positive food reward, it will return and / or continue to seek out further rewards in similar situations.
5. Any impact to nutrition may manifest itself in reduced reproductive success and life expectancy.
6. While nutritional impact on wildlife may vary depending on a number of factors, notably the percentage of the overall diet of the animal is made up of non-natural food and during what time of year, no impact is acceptable under National Park Service management policies.
7. Bears which become conditioned to human food in this area are likely to be killed by humans in defense of life or property inside the parklands or on adjacent lands.
8. Humans are at risk of injury or death when bears attempt to obtain food from tents, packs, vessels, or other similar areas.
9. The park does not consider Ursacks or Bear Vaults appropriate bear resistant containers as they have shown to be insufficient deterrents to bears gaining access to the contents.

The reasons less restrictive measures will not be effective are as follows:

1. Educational efforts regarding proper food storage and disposal of food and garbage have been undertaken by state and federal agencies in Alaska and in other western states for many years. These efforts have doubtless improved the situation and reduced wildlife/human conflict and impacts.

2. Recognizing that variations in the environment and recreational activity require multiple food storage options, park managers have undertaken the following to assist visitors and make these conditions less onerous:
 - Park supplied bear resistant food storage containers (BRFC) are available at park headquarters.
3. Despite these efforts, park managers repeatedly encounter situations in which food or garbage is improperly stored throughout the parklands.
4. The food storage conditions imposed under this section allow for a wide variety of storage options, including free loans of portable BRFC units, to make compliance less onerous.
5. We have considered the use of the Alaska State Administrative Code 5 AAC 92.230 which reads:

A person may not intentionally feed a moose (except under terms of a permit issued by the department), bear, wolf, coyote, fox, or wolverine, or negligently leave human food, pet food, or garbage in a manner that attracts these animals. However, this prohibition does not apply to use of bait for trapping fur bearers or hunting black bears under 5 AAC 84-5 AAC 92.

- Park employees lack authority to enforce this regulation directly, and would rely on state officers. Given limited state staffing in this area and other priorities, enforcement would be severely hampered.
 - If we adopted the language of the state regulation into a park condition under this section, we would unreasonably force our enforcement officers to prove “negligence” in court. The threshold we seek to enforce is lower given our specific legal mandate to protect wildlife.
6. Given the lack of complete compliance with educational efforts, the flexibility in compliance options, and the effort made by park managers to provide free equipment to promote compliance, these conditions are the least restrictive required to fulfill the parklands mission of protecting wildlife and human safety.

Determination of Need for a Restriction, Condition, Public Use Limit, or Closure

Subject: Conditions for removing sunken, grounded, or disabled vessels

Pursuant to Title 36 of the Code of Federal Regulations, 1.5(c) and 3.14(a), the Superintendent of Gates of the Arctic National Park and Preserve is requiring a permit before sunken, grounded, or disabled vessels may be removed from the park.

The reasons for this restriction are as follows:

- This requirement allows the Superintendent to establish terms and conditions for salvage operations as necessary to protect resources, provide for public safety, and minimize impacts on visitors.

The reasons less restrictive measures will not be effective are as follows:

- How to protect park resources, public safety, and minimize visitor impact when removing a disabled vessel needs to be addressed on a case by case basis since the circumstances involved in each incident is unique. A permit allows the park and the boater maximum flexibility to address the specific circumstances at hand when removing disabled vessels.