

National Park Service

Written Determination of Proposed Change of Park Compendium Rules related to Kite Surfing at Cape Cod National Seashore (CACO)

SUMMARY: The Superintendent's Compendium will be revised to authorize a change in park rules to allow kite surfing along approximately 1 3/4 miles of beach between the north end of the lifeguarded section of Coast Guard Beach, and a point north of the lifeguarded section of Nauset Light Beach.

DETERMINATION:

Kitesurfing is a fairly new recreational activity to Cape Cod National Seashore. The kites are 4-line parfoil-type kites with widths of 15-45 feet, attached to lines 80-100 feet long. The kitesurfer straps his/her feet onto a board and is pulled by the kite across the water, often at high speeds (up to 35 knots), with the ability to make jumps of over 15 vertical feet depending upon wind and surf conditions. The kite may be launched from land or water. The kite, during operation, may be in any position from nearly vertically over the head of the surfer during jumps to nearly touching the water or ground when moving quickly. Lines have high tensile strength, may move or shift quickly, and can be difficult to see. Safety-conscious hobbyists must be careful not to operate kites too close to other people.

There is worldwide concern over the impact of kite surfing on shorebirds as seen in journal articles, technical reports, and management plans for conservation sites and parks in Europe, Australia and New Zealand, UK and the United States. Here on Cape Cod, NPS staff have observed disturbance to shorebirds and public safety issues from kite surfing and received numerous reports from biologists regarding the negative impact of kite surfing on nesting and staging shorebirds. A number of biologists provided evidence (direct observations and photos) of kite surfing disturbing beach-nesting and foraging birds in shallow waters. In addition, National Park Service professional staff have observed that when kites are flown in or near nesting birds, plovers exhibit the same behaviors as when avian predators are present (Hoopes et al. 1992). The use and launching of these different types of kites can cause birds to shift or abandon breeding territories, flush incubating birds off nests, cause nest abandonment, disturb feeding adults or chicks, or physically harm eggs or unfledged chicks. Kite surfing can have a direct conflict with ecological functions and disturbs and displaces birds (Beauchamp 2009). Smith (2004) notes that kite surfers are a major source of bird disturbance and that kite surfing disturbs the near shore areas where terns and other birds feed on shoals and sand eels. Krüger (2016) reviewed 17 studies from five countries, twelve of which describe the effects of kite surfing on birds in coastal habitats. This research showed that compared to other types of human disturbances, water sports, and especially kite surfing, tends to present rather strong disturbance stimuli. It tends to have a high impact on birds with a substantial proportion of birds either taking long flights or abandoning the site altogether. Kite surfing has also has been identified as a threat to piping

plovers by USFWS (USFWS 2009). The type of disturbance described is defined as “take” according to the U.S. Endangered Species Act.

CCNS already restricts hand-held kites, para-gliding, and model airplanes near shorebird nesting and staging areas because of resource impacts and believes this new activity warrants similar restrictions. In 2006, kite surfing within the boundary of the Seashore was first identified as an issue impacting shorebird nesting and staging areas. Seashore management placed restrictions on kite surfing within the seashore boundaries in 2008 on the bayside. In 2014, after consulting with the Seashore professional Natural Resource and Law Enforcement Ranger Staff and reviewing kite surfing disturbance observations from other conservation agencies, this seasonal ban was expanded through the Superintendent’s Compendium, to include all ocean and bayside beaches from March 15 to October 15, with the exception of access to the Bay from Wellfleet’s Duck Harbor, which is the window of time needed to protect the arriving and departing shorebirds for nesting, staging and migration.

By 2016, seashore staff had received numerous calls and letters complaining about the seasonal kite surfing restrictions and one individual filed a law suit in Federal Court requesting the restrictions be lifted. On October 7, 2016 the Superintendent withdrew the kite surfing restrictions in the Superintendent’s Compendium and notified the public that a public comment process would be open from October 14 to November 12, 2016 including a public information session to be held at the Salt Pond Visitor Center on October 26, 2016.

Findings

The Superintendent and professional staff reviewed the comments, research, policy and experiences of sites with similar issues, reviewed resource management responsibilities, and reviewed public safety interests and management capacity. Specifically staff focused on an area between Coast Guard Beach and Nauset Light Beach, Eastham, which is too narrow for shorebird nesting and historically has not been observed to have documented nesting sites over the past 15 years and determined that this area could be considered to allow kite surfing. As a result of this review, the Superintendent’s Compendium will contain the following restrictions/conditions pertaining to kite surfing:

Kite Surfing is prohibited at the following locations and during the following times:

Kite surfing is prohibited March 15 through October 15 on all open waters on ocean and bayside within the Seashore other than at the following specific locations.

Eastham:

A total of approximately 1 3/4 miles of beach between the north end of the lifeguarded section of Coast Guard Beach, and a point north of the lifeguarded section of Nauset Light Beach will be

open to kite surfing. The designated kite surfing boundary area will be marked on land by a post on either end. The ocean boundary around Nauset Light Beach lifeguarded section will be marked by a bright orange swim buoy.

Land and water access for takeoff and landings is allowed north of the lifeguarded area on Coast Guard Beach and at the north and south ends of Nauset Light Beach. Kite surfers must stay outside of, and may not launch from, the Nauset Light Beach lifeguarded area when lifeguards are on duty. The land boundary will be either end of the lifeguarded beach which is designated by large brown posts signed as “end of lifeguarded beach”.

Wellfleet:

The town of Wellfleet’s Duck Harbor Beach on Cape Cod Bay is open to kite surfing all year long. This specifically applies to the corridor the width of the town owned property and extends off shore through the extent of the ¼ mile jurisdiction of Cape Cod National Seashore.

The following conditions also apply:

Kite surfers must stay clear of other recreational users and at least 150 feet from seals, which are protected by the Marine Mammal Protection Act of 1972.

Kites for kite surfing are subject to the general prohibition of any airborne device above or within 200 meters of any section of beach designated by signs as a “Closed – Bird Use” area. This prohibition extends offshore as well as onshore.

Considerations

Respondents during the comment period, both verbally and in writing expressed criticism of kite surfing partial bans because they do not believe kite surfing disturbs shorebirds or threatens public safety. Many believe the activity can co-exist with restrictions if communication is clear. In contrast, several commenters supported the seasonal restriction on kite surfing noting personal observations of wildlife disturbance and public safety issues.

US Fish & Wildlife Service and Massachusetts Audubon Society support restrictions and recommend an overall conservative management approach to insure important nesting and staging shorebird areas are protected.

- Seashore staff reviewed practices at other seashores or places with similar resources. We learned that land forms, varied bird migration patterns and visitor access are different at each national park so there is not a unified national policy for all such units. However, there are several parks in the United States where kite surfing bans were implemented to protect wildlife and public safety. Other National Seashores with similar restrictions are: Gulf Islands National Seashore, where kite surfing is banned from March 1 – September 30, and Padre Island National Seashore, where it is banned year-round. Assateague Island

National Seashore has a seasonal ban on kite surfing on bay and ocean waters from October 1 through March 15 and from March 16 through September 30 on specific ocean and bayside beaches. Area and time restrictions are to minimize visitor and operational conflicts and to protect shorebirds that are nesting.

- In addition, Monomoy NWR in Chatham, MA recently banned kite surfing on all waters within the refuge. In 2012, New York State Parks banned all kite surfing in 168 state parks and 78 undeveloped beaches and 14 miles of public beach. Stone Harbor Point in NJ is seasonally closed to kite surfing from March 15- Sept 30th to protect shorebirds. Some coastal state parks in New Jersey have kite surfing closures but it is not specifically named in regulations, instead covered under paragliding. And, in 2010, Hobie Beach Park/Rickenbacher in Florida banned kite surfing.

Seashore professional staff came to the conclusion that:

- Experience, direct observations, research and professional practice at other national seashores dictates that seasonal restrictions are necessary to adequately uphold the NPS mission to protect natural resources.
- Upon further review and discussion with kite surfing practitioners, NPS staff learned that a satisfactory experience can be achieved without kite surfing close to the shore at all times, and as a community they stated that regulations would be followed. Therefore, senior staff recommended and the superintendent decided that kite surfing could be allowed on the ocean side as specified above.
- Seashore staff will monitor these expanded kite surfing activities and may make adjustments in the future. Monitoring and adjustments will be particularly focused on resource impacts and public safety issues.

Public Notice

- The Superintendent's Compendium will be revised with the new requirements effective March 2017.
- A press release, the Federal Register*, and the Park website will contain the new allowances/restrictions. (*Note of 3/31/17: A Federal Register notice was determined not to be needed.)
- Beach signage with new regulations will be installed.

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