

Isle Royale Boaters Association October 2000 Newsletter

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NPS Stonewalling Ordered Stopped

by Fred Bieti

In a recent fundraising letter to IRBA members we indicated to you that Federal Magistrate Judge Timothy Greely had ruled in IRBA's favor and ordered the NPS to answer interrogatories produce documents being withheld since May of this year (see article below).

Now that the NPS has "complied" with the judge's order the reasons for the NPS "stonewalling" have become very clear, confirming our suspicions.

First, we find that the NPS had been knowingly and deliberately holding back, under the guise of "Privileged Documents" the transcripts of the hearings by the Subcommittee on Parks and Recreation held in 1976 and 1973. These documents relate to the Legislation designating portions of Isle Royale a Wilderness Area, all public documents which clearly indicate the NPS has chosen to ignore that "Congressional Intent" in the recently adopted GMP. Statements taken from those "withheld" documents include:

Congressional Hearing Testimony - 1976

The statement of the Hon. Phillip E. Ruppe, United States Representative from the 11th Congressional District of the state of Michigan says:

"The first ... provision provides for the maintenance of boat docks on the island. No significant expansion of boat dock numbers is anticipated, but it is my strong view that the continued maintenance of these facilities is absolutely essential to the continued ease of access and enjoyment the public now associates with Isle Royale National Park."

"Very specifically, the boating public ... have cruised in the Isle Royale waters for years and have used boats or well protected coves on Isle Royale. These visitors ... should have continued use of the National Park in the same fashion as they have used it heretofore."

"That is why in this case with those boat owners having no voice their opinion, no lobby so to speak to speak for them, I think their rights to continue to using the island should be wedded in concrete so (NPS) management later on does not unilaterally deprive them of that right."

Senator Hansen: "We are talking about Isle Royale saying we want to have these boat docks maintained...."

Mr. Bohlen (Deputy Assistant Secretary – Interior Department): "... One purpose of the docks is safety. To be sure, they are to facilitate visitor use, but in the case of storms that arise quite suddenly on the lake, they do provide a safety factor."

Senator Hansen: "Do you recommend their use be permitted to continue?"

Mr. Bohlen: "We do. This is outside the wilderness area. This is in the main body of Lake Superior around the area. Our proposed wilderness line is on the shore so the motor boats are all used outside the wilderness."

Mr. Taylor: "You do not place any of Lake Superior in the Wilderness?"

Mr. Everhardt (Director –National Parks): "No, sir."

It would also appear that the NPS withheld documents so as to prevent the IRBA from finding out about the fact that the NPS Director, at that time, confirmed the fact the waters of Lake Superior are open to navigation:

Mr. Everhardt: "... the waters of Lake Superior are open to navigation, International as well as National, and the State of Michigan retains the mineral rights to this area and controls commercial fishing in these waters."

Congressional Hearing Testimony - 1973

June 4 & 5, 1973 - Hearings before the subcommittee on national parks and recreation of the committee on Interior and Insular Affairs, 93rd Congress, H.R. 4859 and H.R. 5462, Designation of Wilderness Areas, Part 2, Serial No. 93-5:

Congressman Steelman: "... will the present docks on Isle Royale be maintained in size and number by the park service after Isle Royale receives wilderness designation?"

Mr. Beattie (Superintendent of Isle Royale National Park): "Yes sir, our intention is to maintain existing docks and even to construct a few more."

The Land Grab Issue

Documents pried loose by the judge's order also confirm the "land grab" being attempted by the NPS, with the complicity of certain elite environmental groups. These released documents indicate that 1677 acres of Isle Royale lands were excluded from Wilderness designation in Congressman Ruppe's final bill. These areas include, but are not limited to, Siskiwit Bay and McCargoe Cove. These areas are clearly designated nonwilderness. By redefining "zoning" these areas, i.e., removing the docks and implementing restrictions that reduce visitor use the NPS will claim these areas are no longer used, is there a chance to "grab" these areas and redefine them as candidates for "wilderness" designation?

That "Land Grab" is confirmed by GMP e-mails such as this:

Subject: Re: Wilderness Questions
Author: Terry Goodrich at NPS in Denver, CO
Date: 11/26/97

ISROers,

In my limited experience, it is those little tiny red flags that we think nobody will notice, let alone comment on, that jump up and bite us where we don't like. Those red flags detract from the real issues that are worthy of comment. There is no reason on earth that anybody should object to these few areas being converted to wilderness IF they know the situation and understand the real intent of the Wilderness Act. But it is not those educated few that will comment. Being the compromiser that I am, might I suggest that we set the stage for the action in the GMP by briefly explaining that all the reasons for excluding these areas before are gone and the GMP proposes nothing that would change that situation, therefore, they would be considered for wilderness in the WMP. If more explanation is needed, we could go on to say the truth - this is the type and level of detail that is best addressed in an implementation plan, like the WMP, which is one of the many implementation plans that will flow from the GMP. If I interpret the new planning guidelines (NPS-2) correctly, that is the company line nowadays anyway -- GMPs set "general" direction and implementation plans get down to the nuts and bolts. Amen

Terry

----- reply -----

12/2/97

Subject - "Wilderness Questions" - I agree that we must clearly state that the intent of the ISRO wilderness legislation was for the non-wilderness to revert to

wilderness if not needed for development or if the development was removed (cabins, etc.) But the wordsmithing is critical.

Please make it happen.
(Superintendent)

It is a sad state of affairs citizen groups like IRBA must go to court to make the NPS bureaucrats keep their word and comply with Congressional intent. On the other hand, that right is precisely what makes this country great – and worth fighting for? For IRBA Congressional testimonies discussing more of the above issues go to <http://www.isleroyale.org> and click Congressional Testimony.

Judge Grants IRBA Motion Compelling Defendants to Answer Our Discovery Requests

By Grant Merritt

On August 21, 2000, our attorney Grant Merritt argued before Federal Magistrate Judge Timothy P. Greeley in Federal Court in Marquette, MI that the National Park Service and the other defendants in our lawsuit had violated the law when they refused to answer the 25 interrogatory questions and 18 requests for documents. Fred and Betty Mae Bieti, Jim Markham, Tom Thornton and Grant's wife Marilyn were also present in the courtroom.

It did not take Judge Greeley long to decide that our motions were proper and that the defendants must be ordered to comply with our requests -- in other words, he decided in our favor from the bench. In the course of the oral argument Assistant U.S. District Attorney Glenda Gordon representing the defendants apologized to the Judge and "hoped this would not hurt her clients."

Just two days later on August 23rd, Judge Greeley supplemented his oral decision by issuing a formal written opinion that stated: "Clearly, the certification that the record is complete is inaccurate.... Since the record appears incomplete, discovery is appropriate. Discovery requests were made and no answers were served objecting to the interrogatories or to the request to produce.... I find that defendants have waived any objections to plaintiffs' discovery request, other than that certain documents may not exist."

We have now received detailed answers to our interrogatories and the documents that we requested.

Finance Report

By John Kappler

Thus far the response to our call for help to bring the bank account back into the black has been very gratifying and appreciated. We have received \$8,582 in new donations for the legal battle and \$385 in new and current membership dues. While these contributions and dues were sufficient to bring the checking account into a black position, we still need those of you who have not participated to send in donations so we can cover current expenses plus repay the \$10,000 loan we had to make last month. For our fiscal year beginning October 1, 1999, we have had the following results:

Membership dues	\$49,825
Contributions	24,040
Other	<u>2,182</u>
TOTAL RECEIPTS	<u>\$76,147</u>
Legal Fees	80,242
Postage & Printing	2,518
Annual Meeting	1,246
Supplies	1,010
All other	<u>1,364</u>
TOTAL EXPENSES	<u>\$86,380</u>
EXPENSES OVER	
RECEIPTS	(\$10,233)
ORIGINAL LOAN BALANCE IS	\$10,000
Less payments	-0-
REMAINING LOAN BALANCE IS	\$10,000

Based on the victory in Federal Court discussed elsewhere in this Newsletter, we should receive by court order a refund of all, or a portion of, the expenses associated with our attorney preparing the two motions and court hearing related to forcing the NPS to answer our interrogatories. However, we all know that the government works at a snail's pace so we are uncertain as to how much of the bills will be approved by the judge for reimbursement and when we will finally receive payment.

IRBA Legislative Liaison Ticketed

By Fred Bieti

On August 31, 2000, Fred Bieti was ticketed for "Use of permanently installed generator in area where prohibited" under Federal Law - 36 CFR 1.5 (a)(1).

In January, 2000 IRBA President Jim Markham messaged the Isle Royale National Park Superintendent asking what, if any, GMP actions would be implemented at Isle Royale. The Superintendent replied,

"... As you are well aware, Isle Royale National Park, Michigan, has an approved general management plan. The park will proceed with implementation of that plan. This implementation will include necessary planning and implementation of other provisions of the plan. The park is currently proceeding with the necessary changes in the compendium in order to implement such provisions as Quiet/No-Wake Zones and certain restrictions on on-board generators."

Remember, the GMP on page 37 states that if goals for "quiet" are not met, the NPS could create non-motorized areas through an amendment to the GMP.

In an effort to find out just what those "goals" for quiet are and test the authority of the NPS to implement such a restriction on "navigable waters," waters IRBA considers outside the jurisdiction of the NPS, some members decided to challenge the rule - at their own expense - thereby "fast tracking" the issue into Federal Court for an opinion. Legislative Liaison, Fred Bieti, P.E., after trying since June, and armed with his Radio Shack Model 33-2050 Sound Level Meter, was finally successful in receiving such NPS "recognition" and was ticketed on August 31, 2000. (More to come on the very interesting findings using the Sound Level Meter. Note that Fred is a P.E. - registered Professional Engineer - and quite familiar with the use of such instruments.)

Arraignment in front of Federal Magistrate Judge, Timothy Greeley is scheduled for October 19, and a tentative hearing date has been set for October 30.

The following is Mr. Bieti's dissertation:

On August 31, 2000, at 1:55 PM two NPS Park Rangers approached our vessel, at Isle Royale National Park, while my wife and I were anchored in Duncan Bay, one of Lake Superior's traditionally used, safe anchorages and issued us a ticket for "Use of permanently installed generator in area where prohibited." - 36 CFR 1.5 (a)(1).

The Ranger indicated we were within 1/4 mile of a campground and therefore in violation of the Park regulations which ban anchoring within the 1/4 mile distance with a generator running. Since the harbor is less than 1/2 mile wide where these traditional anchorages are located I noted that it is impossible to anchor more than 1/4 mile away since the campground used to determine the distance is located near the centerline of the harbor.

I thought, "Why would the NPS prohibit the use of a small, whisper quiet, permanently installed generator in an area where it is allowable to run two large marine propulsion engines totaling 700 horsepower? Where does the NPS get such authority to make such arbitrary decisions?"

As some of you may recall, on April 22, 1999, several IRBA representatives met with Superintendent Barnard regarding GMP issues, one of which was the use of on board generators. IRBA asked repeatedly for a definition of a "quiet" generator, i.e., a dB rating. The Superintendent, after a great deal of hesitation, responded by indicating that "quiet" means "not running." Also, recall the statement made in the Administrative record by the Chief ranger on banning generators: "We want to deal with it here so that we can draw a line in the sand as long as we've stirred up so much controversy anyway; if done in the GMP, we have the environmental side mobilized. Leaving such a critical issue to the WMP leaves open too great a risk that we wouldn't get as many non-generator docks as Doug and I believe we can in the GMP."

This past season the Isle Royale National Park Superintendent via fiat (a.k.a. the Superintendent's Compendium) did issue the following ban which will, in fact, prevent many boating visitors from using traditional safe anchorage areas, shown in various cruising guides, at all, due to the fact that there is no possible way to safely anchor while observing the 1/4 mile rule, i.e., Duncan Bay, McCargoe Cove, Birch Island, Hay Bay, etc.

That prohibitive Superintendent's dictate reads as follows:

Part I - GENERAL PROVISIONS

36 CFR 1.5(a)(1) - Closures and Public Use Limits

(a) Consistent with applicable legislation and Federal administrative policies, and based upon a determination that such action is necessary for the maintenance of public health and safety, protection of environmental or scenic values, protection of natural or cultural resources, aid to scientific research, implementation of management responsibilities, equitable allocation and use of facilities, or the avoidance of conflict among visitor use activities, the superintendent may:

(1) Establish, for all or a portion of a park area, a reasonable schedule of visiting hours, impose public use limits, or close all or a portion of a park area to all public use or to a specific use or activity.

(2) Designate areas for a specific use or activity, or impose conditions or restrictions on a use or activity.

(a)(1) Use of electronic devices, generators, and other mechanical devices within Isle Royale National Park.

The operation of electronic and motorized devices including, but not limited to stereos, televisions, radios tuned to commercial stations, and portable generators is prohibited within the following zones established by the park's GMP/EIS: Frontcountry Zone, Wilderness Portal Zone, Backcountry Zone, Primitive Zone, Pristine Zone, and Quiet/No Wake Zone. These zones include approximately 99 percent of the terrestrial land area of the park. The use of marine band radios and other emergency communication devices is allowed within these zones consistent with the requirements of 36 CFR 2.10(a)(4) Camping and Food Storage, 36 CFR 2.12 Audio Devices, and 36 CFR 2.34 Disorderly Conduct.

The use of electronic devices such as stereos, televisions, and radios tuned to commercial stations is permitted within the Developed Zones (Windigo, Rock Harbor, and Mott Island) and the Lake Superior Open Water Motorized Zone, subject to the requirements of 36 CFR 2.10(a)(4), 2.12, and 2.34. Park employees and life-lessees whose residences are located within Quiet/No Wake Zones, may operate electronic devices if the noise associated with such devices is kept low enough so that it cannot be heard outside the immediate vicinity of the residence.

JUSTIFICATION: This action implements specific provisions of the park's GMP/EIS, which was approved by a Record of Decision, signed on May 11, 1999, by the Midwest Regional Director of the National Park Service. This action helps protect the natural quiet and wilderness values sought by most Isle Royale visitors. It reduces the impact of electronic and mechanical noise on visitors camping in or otherwise using Wilderness and/or non-developed areas of the park. The action promotes a quality visitor experience by providing relatively tranquil, natural marine and/or wilderness surroundings consistent with the values enunciated by the Wilderness Act, Park Purpose Statements, and other applicable law and policy.

(a)(1) Use of permanently installed on-board vessel generators.

Operation or use of permanently installed on-board vessel generators is prohibited at public docks at the following locations: Todd Harbor, McCargoe Cove, Birch Island, Siskiwit Bay, Duncan Narrows, Duncan Bay, Merritt Lane, Three Mile, Tookers Island, Daisy Farm, Moskey Basin, and Chippewa Harbor

Operation or use of permanently installed (by the boat manufacturer) on-board vessel generators is permitted at all other boat docks otherwise open and available for public camping or overnight use, subject to the requirements of 36 CFR 2.10(a)(4), 2.12, and 2.34.

Operation or use of permanently installed on-board vessel generators is permitted by vessels at anchor within Quiet/No Wake Zones (See Boating and Water Use Activities, Section 3.6 - Prohibited Operations) except when anchored within 1/4 mile of a designated park campground.

JUSTIFICATION: This action implements specific provisions of the park's GMP/EIS, which was approved by a Record of Decision, signed on May 11, 1999, by the Midwest Regional Director of the National Park Service. All of the listed docks are located close to primitive campgrounds. Generators operated at these docks would be clearly audible in the adjacent campgrounds. This action helps protect the natural quiet and wilderness values sought by most Isle Royale visitors. It reduces the impact of mechanical noise on visitors camping in or otherwise using Wilderness and/or non-developed areas of the park. The action promotes a quality visitor experience by providing relatively tranquil, natural marine surroundings.

The following text is taken directly from that Compendium: (edited for brevity)

A. What is the Superintendent's Compendium?

The Isle Royale National Park Superintendent's Compendium is the summary of park specific rules implemented under the discretionary authority of the park Superintendent....

I would point out here that the development of the Park Compendium must comply with certain requirements:

D. 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 the use or activity consistent with the NPS Organic Act and NPS policy?
- Is the use or activity consistent with and compatible to 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?

Upon review of Section D, above, it would appear that the NPS fails to follow its own administrative guidelines and did not comply with many of the "Requirements of the Superintendent's Compendium". Where does the NPS get such authority to make such arbitrary decisions? We'll find out – but IRBA needs your help to do it. Please support the IRBA with a contribution today.

IRBA Fishing Lures - What's Hot

By Dave Hand

Well, for most of us that fish the waters of Lake Superior around Isle Royale, another season has quickly come to an end. This past year many of us had the opportunity to use the fishing lures which our association sells as a promotional fund raising effort to support the ongoing law suit against the National Park Service. The lures are supplied by Creative Touch Tackle and the owners are David Dueland and Mickey Litwin both from the Duluth area. As I stated in a newsletter earlier this year, David and Mickey are constantly experimenting with different spoon designs and colors that they feel are the best for catching trout and salmon in the Lake Superior waters of Isle Royale. This past spring we received about 50 different varieties and colors of lures for our promotion. The bright colors, sparkle and color-combinations on many of the lures are so eye-catching that one would want to hang on their Christmas tree instead of using them for fishing. I think that was the intent of at least a dozen big lakers that decided that the 10-lb test line I was using was worth breaking instead of just being caught, photographed with a bunch of smiling fishermen, weighed and released. Anyway, here is a brief report I received from several of our members (including myself) that successfully used the IRBA lures.

The first report I received was from member Don Hannula of Lake Linden, MI who is retired and has plenty of time to fish. Don's first report was from a fishing trip in mid May. He called me and said he caught 20 of 22 fish on the "fire tiger" lure (N4-11 or N3-11). Later Don reported that on Memorial weekend, Don caught 17 out of 21 fish on the same lure and on Labor Day, fishing in the fog and waves, he caught 7 of 7 on the same lure. The fire tiger lure works for Don.

During the IRBA annual island meeting, several members reported success using the yellow needle-nosed lure with red spots (N4-24). In fact, one member reported that a huge laker broke the hook off the lure. My boat had much success with this lure. In fact, during the first week in August, my fishing crew and I caught and released 147 lakers (with the exception of 10 fish that went in the frying pan). Thirty-nine of those fish were caught on this lure. Mickey Litwin also reported that on the last evening of his fishing trip to the island, he caught 9 dandy redbfin lakers and 5 were caught on this same lure (N4-24).

It seems as though the hottest IRBA lures for the island this season were the fire-tiger lure (N4-11 or N3-11) and the yellow needle-nose lure with red spots (N4-24). We still have those lures in stock if you would like to purchase them. In the next few months we hope to post pictures of the lures and their numbers on the web so you can pick and choose the ones you want. The lures cost \$ 5.00 each of which \$ 2.50 goes to the legal fund. If you would like to purchase some lures please send in your order to IRBA P.O. Box 97, Houghton, MI. 49931 and we will promptly fill your order.

October Meeting Scheduled in Duluth, MN

By Dave Hand

The next monthly IRBA meeting will be held at the Holiday Inn in Duluth, MN on October 25th 2000 at 7:00pm. This meeting is intended to inform the members on the west end of Lake Superior of the present IRBA activities and gives them an opportunity to provide valuable input to the organization. Hope to see you there!