



Fire Island National Seashore Talking Points

Background

Over the course of many years clothing optional recreation became recognized as an accepted public use at Fire Island National Seashore (the Seashore). As the popularity of clothing optional recreation grew, conflicts developed between this user group and other park visitors. In an effort to mitigate these conflicts, the Seashore posted signs to advise visitors of those areas popular for clothing optional recreation. Visitation numbers in these areas continued to increase and additional issues developed related to visitor safety, visitor use impacts, and the sustainability of the natural resources. Over time, the Seashore observed a significant increase in lewd and lascivious behavior as well as other criminal activities in these areas popular for clothing optional recreation.

Enforcement Plan

Because of these issues, on February 4, 2013, the Seashore started enforcing the State of New York public nudity laws under the Federal Assimilative Crimes Act. The Seashore established a progressive law enforcement approach to enforcing public nudity within the park. The initial phase of this enforcement effort concentrated on public education and a focused law enforcement effort in those areas where clothing optional recreation or public nudity presented the highest level of user conflicts.

These sites included:

- Lighthouse Beach
- Sailors Haven
- Barrett Beach
- Watch Hill
- The Wilderness Visitor Center to Old Inlet

Since the public nudity enforcement effort began, there has been a decrease in issues related to user conflicts, visitor safety, visitor use impacts and criminal activity at popular clothing optional recreation areas. Lighthouse Beach and the area west of the Wilderness Visitor Center are now managed using normal law enforcement operations.

The Seashore has transitioned to park-wide enforcement that manages the impact of public nudity based on the mission of the National Park Service and the mission of Fire Island National Seashore. Public nudity statutes will be enforced throughout the Seashore based on the totality of the circumstances surrounding each infraction.

The Mission of the National Park Service (established in 1916)

The National Park Service preserves unimpaired the natural and cultural resources and values of the national park system for the enjoyment, education and inspiration of this and future generations. The NPS cooperates with partners to extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country and the world. (www.nps.gov/aboutus/mission.htm)

The Mission of the NPS at Fire Island National Seashore

The NPS is committed to preserving Fire Island National Seashore's cultural and natural resources, its values of maritime and American history, barrier island dynamics and ecology, biodiversity, museum collection objects and wilderness. The NPS is committed to providing access, a positive visitor experience, and recreational and educational opportunities for FINS visitors in this natural and cultural setting close to densely populated urban and suburban areas. While maintaining and exemplifying the policies of the NPS, FINS will work collaboratively with local partners and constituents to achieve excellence in all we do and create a shared stewardship philosophy for one of the nation's national treasures. (www.nps.gov/fiis)

Considerations

1. Public nudity is illegal within the State of New York. Public nudity has been prohibited in the State of New York since 1984. NPS policies encourage consistent enforcement of state laws on federal lands, and discourage the designation of clothing optional areas.

NPS Director Special Directive 91-3: Information on Public Nudity (1991)

Because of the potential for such use conflicting with the enjoyment of visitors participating in other recreational uses, the NPS will neither encourage persons to engage in such activities, nor will we designate areas for the use of individuals or groups wishing to engage in public recreation activities in the nude.

There is no federal regulation prohibiting nudity that applies to all units of the NPS... When unacceptable visitor conflicts occur as a result of public nudity, a resolution of the situation should be attempted informally, if appropriate, with the persons who are the subject of the complaint. If informal attempts fail to resolve the conflict and enforcement action becomes necessary, the option may exist of either applying NPS regulations addressing disorderly conduct (36 CFR 2.34,) park specific regulations, or State or local laws that specifically prohibit public nudity. The latter method has the advantage of providing consistency in enforcement in both Federal lands and the adjacent areas. Additional information can be found at <http://www.nps.gov/policy/SD-91-3.pdf>.

NPS Management Policies: Sections 8.1 and 8.2:

Information concerning National Park Service management policies can be found at <http://www.nps.gov/policy/mp2006.pdf>.

2. Public nudity adversely impacts the visitor experience and National Park Service values. Public nudity at the Seashore has led to many user conflicts over the years. Public nudity has generated complaints from park visitors as well as the residents and families of the local communities located within the boundary of the Seashore. National Parks are public lands that Congress has set aside for the enjoyment, education and inspiration of this and future generations. The National Park Service goes to great lengths to attract people of all ages and walks of life to "Experience Your America". The Seashore, like all other NPS sites, provides educational programs and opportunities for school children of all ages. The Seashore encourages parents and young children to explore and learn about the park through programs such as the Junior Ranger Program. These educational programs take place at various locations within the park, which includes developed areas and all natural and cultural landscapes. Public nudity is not compatible with these NPS and Seashore programs and initiatives.

3. Impacts from excessive and conflicting visitor use, such as that at Lighthouse Beach, created a public health and safety risk and negatively impact the sustainability of the natural resources. Prior to 2013, the visitation at Lighthouse Beach was more than the area could sustain. This high visitation was directly related to the clothing optional recreation. Lighthouse Beach, along with most other Seashore locations, is designated as "Carry In, Carry Out." As a designated "Carry In, Carry Out" location, visitors are expected to remove all items that they bring with them to the Seashore. Many visitors at Lighthouse Beach did not comply with this regulation and as a result the area suffered from an abundance of litter. Many visitors at Lighthouse Beach failed to use restroom facilities provided at the Lighthouse Annex. Instead, visitors would urinate in public on the beach or cross over the dunes to urinate or defecate. The high visitation, along with the litter and the human waste created an unhealthy and unsafe environment.

There were also impacts to the natural resource from the excessive and conflicting visitor use. Dune degradation was a direct result of the visitors crossing the dunes to dispose of their human waste. Shorebird breeding habitat was impacted by the visitation. Visitors crossing the dunes would disrupt prime breeding habitat for piping plover and other threatened and endangered species. Visitor would also move symbolic fencing that protected sandy flats in order to create a larger visitor use area for themselves. This in turn would impact the natural resource by reducing the habitat set aside for wildlife.

4. Areas popular for clothing optional recreation, or public nudity, have been prone to incidents involving lewd and lascivious behavior as well as other criminal activities. Park history has shown that Seashore areas popular for clothing optional recreation, or public nudity, were prone to incidents involving lewd and lascivious behavior as well as other criminal activities. Although this illegal activity evolved over many years, the onset of the internet and social media served as a huge catalyst. These methods of communication were often used to advertised, organized, or otherwise promulgate chance meetings or public gatherings involving illicit behavior. Park employees from all disciplines, as well as

the general public, reported observing lewd and lascivious acts such as public sex, voyeurism and exhibitionism. Law Enforcement Rangers routinely responded to incidents of lewd and lascivious behavior that routinely included illegal acts such as disorderly conduct, soliciting, controlled substance violations, alcohol violations, etc...

Questions & Answers

Does the National Park Service have a regulation that prohibits public nudity?

No, the National Park Service does not have a service-wide regulation expressly allowing or prohibiting public nudity. However, in 1991, the National Park Service went on record (NPS Director Special Directive 91-3) to provide direction on public nudity service-wide. In this directive, the NPS stated that public nudity would not be encouraged because of the potential for user conflicts. The document also stated that the NPS would not designate clothing optional recreation areas. This document recommended informal resolution, if appropriate. If enforcement action is necessary, the document recommended using 36 CFR § 2.34 (Disorderly Conduct), park specific regulations, or State or local laws that specifically prohibit public nudity. Emphasis was put on the use of State or local laws that prohibit public nudity as a way of establishing consistency in enforcement on Federal lands and the adjacent areas. The State of New York has a statute prohibiting public nudity that has been codified since 1984. As recommended at the National level, Fire Island National Seashore has elected to use this State statute.

If the National Park Service has no service-wide regulations prohibiting public nudity, then how is the National Park Service enforcing state laws on federal lands?

The National Park Service has concurrent jurisdiction at Fire Island National Seashore and as such, the Seashore may adopt the State of New York statute that prohibits public nudity under the Federal Assimilative Crimes Act.

What is the Federal Assimilative Crime Act?

The Assimilative Crimes Act (ACA) is a Federal statute (18 U.S.C.A. § 13) which provides adoption by Congress of state criminal laws for areas of exclusive or concurrent federal jurisdiction if the crime is not punishable under federal law. In short, when a criminal offense has been committed on lands that have been reserved or acquired by the federal government, and the offense is not a federal offense, state law will apply to the offense under the Assimilative Crimes Act. When the federal government prosecutes the offense, it is not enforcing state law but is enforcing the federal law by incorporating or by applying the state law to the offense. This statute uses local laws as gap-fillers for federal criminal law.

What is the State of New York Statute that prohibits public nudity?

New York Penal Code, Article 245 § 245.01, Exposure of a Person, states a person is guilty of exposure if he appears in a public place in such a manner that the private or intimate parts of his body are unclothed or exposed.

What is the penalty for being nude in public?

Depending on the totality of the circumstances, penalties may range from a warning to arrest with fines of up to \$5,000 and imprisonment of up to six months. If a person were to receive a violation notice for being nude in public with no extenuating circumstances, the fine would be approximately \$250.00 plus court assessment fees.

What is meant by the totality of the circumstances when it comes to enforcing public nudity?

In many instances, the enforcement of the law is not black and white. Because of this, officers are authorized to use discretion based on the totality of the circumstances surrounding an infraction. This discretion allows officers to handle violations at the most appropriate level. Agencies may limit the application of individual officer discretion based on enforcement plans or management initiatives. Totality of the circumstances, as this phrase applies to the enforcement of public nudity, means that an officer will consider all factors relevant to the violation. These factors include but are not limited to location, time of day, season, bystanders, nature of the contact, duration, previous contacts and associated violations. Once the officer has considered the totality of the circumstances, he or she will then use discretion to issue a verbal or written warning, a violation notice or to make an arrest.

Is there anywhere on Fire Island that it is legal for an individual to be nude in public?

No there is not. The National Park Service will enforce the statute on public nudity on all lands and waters that are within the legislative boundary of Fire Island National Seashore and under the administrative control of the Seashore. Enforcement of the New York State statute prohibiting public nudity on lands and waters within the boundary of the Seashore not under the administrative control of the National Park Service are enforced by state and local government agencies. Individuals with questions pertaining to public nudity in the towns of Islip and Brookhaven or in the villages of Saltaire and Ocean Beach should contact those government entities directly.

Clothing optional recreation has been accepted on Fire Island for decades. Why the change?

There are four main reasons for the change in enforcement:

1. Public nudity is illegal within the State of New York and the National Park Service does not encourage public nudity or support it through the designation of clothing optional recreation areas.
2. Public nudity adversely impacts the visitor experience and National Park Service values.
3. Impacts from excessive and conflicting visitor use, such as that at Lighthouse Beach, created a public health and safety risk and negatively impact the sustainability of the natural resources.
4. Areas popular for clothing optional recreation, or public nudity, have been prone to incidents involving lewd and lascivious behavior as well as other criminal activities.

Please see the section above labeled as "Considerations" for additional information related to each subject.

Does the New York Statute pertaining to public nudity prohibit women from being topless?

No, State of New York case law has established that women may be topless in public.

Does the case law pertaining to women being topless in public apply to Fire Island National Seashore as well?

Yes, the case law applies to the assimilation of the New York Statute pertaining to public nudity. This means that women may be topless at the Seashore and still be in compliance with the law.

References

Superintendent's Compendium:

<http://www.nps.gov/fiis/parkmgmt/upload/2014-FIIS-Supt-s-Compendium-UPDATED-August-2014.pdf>

Superintendent's Determination:

http://www.nps.gov/aboutus/foia/upload/FIIS_Superintendents_Determination_Signed_withRangerStatements_For_Web.pdf

Contacts

Chris Soller, Superintendent
(631) 687-4752

Duane Michael, Acting Chief Ranger
(631) 687-4757