

Court Throws out Boaters' Challenge to Park Service's Isle Royale Plans

The U.S. District Court for the Western District of Michigan has found that a group of boaters had “standing” to bring a law suit challenging a General Management Plan (GMP) adopted by the National Park Service. But the court found that the Park Service acted within its authority and had not violated any federal regulations in adopting the GMP.

Isle Royale National Park (Isle Royale) is a federal wilderness area located on an island in the waters of Lake Superior. In February 1994, the Park Service began the process of preparing a GMP to guide the administration of the island for the next 15 – 20 years. A series of public meetings was held, and in March 1998, Park Service produced a draft GMP, which also served as an Environmental Impact Statement (EIS) required by the National Environmental Policy Act (NEPA). The draft GMP contained five alternative plans, one of which was selected as the preferred plan by the Park Service. After comments and revisions, a final GMP/EIS was produced in August 1998, which outlined the alternatives for managing the Park, and identified the preferred plan. A record of decision (ROD) selecting the preferred plan was put into effect in May 1999.

The goal of the chosen GMP stated the following:

To meet the diverse expectations and needs of Isle Royale visitors while emphasizing the natural quiet that is fundamental to wilderness experiences. All park areas will be available to all visitors, so long as users participate in ways that are consistent with the access, facilities, and opportunities provided. Management zones will provide guidance for managing specific areas for desired visitor experience and resource conditions.

The Plan provided that:

Campgrounds will be designed and access provided to separate motorized and non-motorized uses in a few areas; certain docks will be removed or relocated, for example, and some new campgrounds will be provided. A variety of uses will be available that will be fairly evenly distributed across the island. Use limits may become necessary in some management zones to prevent overcrowding and maintain quiet and solitude. Quiet/no-wake water zones will be established to reduce noise and wake impacts in numerous areas. Other regulations aimed at reducing sound associated with humans will also be implemented.

The Isle Royale Boaters Association (the Boaters), a group of motorboaters who regularly visit Isle Royale, disagreed with many aspects of the proposed GMP, particularly those affecting motorboaters.

The Boaters sued the U.S. Department of Interior, of which the National Park Service is a part, to stop implementation of the new GMP.

The Boaters' objections were that the plan proposed to remove some docks and shelters, to remove a trail, and divide the park into zones allowing varying levels of use and modification of the environment within these levels, and created future non-motorized zones in the Park. The Boaters alleged that the Park Service' proposed actions violated several statutes, including the Administrative Procedures Act (APA), the Americans with Disabilities Act (ADA), the Rehabilitation Act, the Wilderness Act, and the National Environmental Policy Act (NEPA).

Standing to Sue

APA Standing. The Boaters' law suit was brought under the APA, which governs the procedures with which federal agencies adopt new rules or take "final agency actions." Under the APA, a court may set aside an agency's decision only if the decision was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." Under an APA law suit, a court must consider whether the agency acted within the scope of its legal authority, adequately explained its decision, based its decision on facts on the record, and considered relevant factors.

The Park Service initially argued that the Boaters did not have standing to bring the suit because the GMP was not a final agency action that harmed the Boaters. But the court found that a prior 6th Circuit case, *Sierra Club v. Slater*, 120 F.3d 623 (6th Cir. 1997) was precedent for concluding that "a final EIS or the ROD issued thereon constitute the 'final agency action' for purposes of the APA." In the Boaters' case, the GMP also served as a final EIS, which was a final agency action. Because the Boaters engage in motorboating in and around the Park and could face injury to these interests if the Park Service carries out the GMP/EIS, the Boaters had the right to sue to protect their interests under NEPA because the EIS is a NEPA requirement.

ADA and Rehabilitation Act Standing. The court next reviewed whether or not the Boaters have standing to bring suit under the Rehabilitation Act and the ADA. The Boaters stated in their complaint that their membership includes members who are disabled.

The Rehabilitation Act extends its coverage to "any person aggrieved by any act or failure to act by any recipient of Federal assistance of Federal provider of such assistance under section 504 of this Act."

The Park Service, being a unit of the Department of the Interior, is a “Federal provider of . . . assistance under section 504 of this Act”; and it provides assistance to a “department, agency, special purpose district, or other instrumentality of a State or of a local government”, 29 U.S.C. § 794(b)(1)(A).

The court concluded that Rehabilitation Act applies to the Department of the Interior, and that even non-disabled individuals who are affected by discrimination against disabled individuals may be “aggrieved,” and be allowed sue under the Rehabilitation Act if they are directly affected by the action taken against a disabled individual.

Under the ADA, the law suit could be brought under section 42 U.S.C. § 12132, which provides that “[t]he remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 . . . shall be the remedies, procedures and rights this title provides to any person alleging discrimination on the basis of disability in violation of section 202.” The court found that the Boaters could sue under the ADA on the same terms as under the Rehabilitation Act even though they are not themselves disabled.

Several Boaters complained that they would suffer harm as a result of the impact of the proposed GMP on themselves and disabled family or friends. One boater was concerned that the GMP’s ban on generators in the park would prevent him from keeping refrigerated medicines there so that his sick son could enjoy the park. Another complained that a doctor who uses the park could not bring along refrigerated medicines in case park visitors needed his care. But the court found that because the boy had outgrown his illness and the doctor’s need was just a precaution in case someone needed medicine, no alleged actual injuries that would confer standing were caused by the GMP.

Other boaters complained that removing one of the docks would prevent them from getting to parts of the park because of poor health or old age, requiring them to backpack to those areas. But the court rejected the moderate difficulty or pain in walking as harm sufficient to give the Boaters the right to sue.

Only one out of four affidavits submitted with the lawsuit showed sufficient standing to sue the Park Service under the Rehabilitation Act and the ADA. It was submitted by an individual who was sufficiently disabled that he could not get out of a boat without a dock. Because certain docks were planned to be removed from the Park, this affidavit was sufficient to give the Boaters the right to sue.

Alleged Violations of Wilderness and National Park Acts

Wilderness Act. The Boaters complained of the Park Service's plan to divide the Park into zones, some of which would prohibit motor boats, to remove certain docks and add others, and to remove certain shelters accessible to motorboaters, and eliminate a particular trail. The Boaters alleged that these plans were "arbitrary and capricious."

But the court found that the GMP was consistent with the Wilderness Act because the proposed actions were intended to "preserve and protect the park's wilderness character for use and enjoyment by present and future generations." The Wilderness Act leaves much to the discretion of the Park Service.

The Park Service cited safety concerns with respect to certain docks and noted that the number of docks would actually increase from 20 to 22. The court found nothing arbitrary or capricious in the dock plans.

Similarly, the court found the reduction of shelters from 88 to 70 to be consistent with the Wilderness Act's general prohibition of shelters in wilderness areas and, therefore, not arbitrary or capricious. Finally, the court found the Park Service's plan to close a particular trail was intended to protect archaeological resources and that the Boaters failed to show that resources would be harmed by the trail's closure.

Isle Royale Wilderness Act. The Boaters complained that Isle Royale Wilderness Act required continued maintenance of dock facilities, noting that several docks were in poor repair. But the court pointed out that the Park Service has considerable discretion in how it manages the Park, and found no indication that the amount of dock space would be reduced under the GMP. Moreover, the Boaters did not provide evidence that any docks had deteriorated to the point that they were unusable or that any failure to maintain the docks had harmed the Boaters. Thus the Boaters' allegations of Isle Royale Wilderness Act violations had no merit.

National Park Service Organic Act and Isle Royal National Park Act. The Boaters complained that the GMP emphasized resource protection at the expense of visitor use and enjoyment, while the National Park Service Organic Act and Isle Royal National Park Act require a balancing of these factors. But the court disagreed. For example, the GMP separates the Park into zones, some of which provide

quiet/no-wake water areas, reducing noise to meet the needs of hikers and canoe/rowboat paddlers. The court found that overall, the GMP equally emphasized resource protection and use and enjoyment.

NEPA. The Boaters complained that the GMP violated *NEPA* because it did not rigorously analyze alternatives, including the “no action” alternative.

NEPA rules dictate the procedures for analyzing alternative actions:

- Rigorously explore all reasonable alternatives;
- Consider each alternative in detail;
- Include alternatives that other agencies may implement;
- Include the “no action” alternative;
- Identify the preferred alternative; and
- Indicate any mitigation measures to be taken not part of the proposed action.

40 C.F.R. § 1502.12.

Also, *NEPA* requires agencies to conduct a five-step analysis of its selected alternative:

1. State the environmental impact of the action;
2. State any unavoidable adverse environmental effects of the action;
3. Identify alternatives to the action;
4. Explain the relationship between short-term and long-term effects of the action; and
5. Describe irreversible commitments of resources resulting from the proposed action.

42 U.S.C. § 4332(2)(C).

The Boaters did not complain that the Park Service did not conduct an analysis of alternatives. Rather, they complained that the Park Service’s analyses were too brief. But the court pointed out that *NEPA* regulations do not “prescribe a minimum page length for discussion of alternatives.” Instead, the EIS must simply serve its purpose in helping an agency properly consider the environmental impacts of its decisions.

Among other specific concerns expressed by the Boaters was the lack of a site-specific analysis, failure to supplement the EIS after changes were made between the

draft GMP and the final GMP, failure to disclose critical documents, and lack of accuracy in the Park Service's analysis of park visitor counts and integrity in the economic feasibility of the GMP.

But the court found that 1) the GMP indicated that a site-specific analysis would be performed for each individual action before it is performed, satisfying the site-specific analysis requirement; 2) the changes made to the GMP after the draft was publicized were too minor to warrant a supplemental EIS; 3) the documents that the Park Service allegedly failed to disclose were already public documents; and 4) the visitor count errors were insubstantial and the economic analysis was conducted by an independent firm with no evidence of undue influence by the agency. Therefore, the court rejected these allegations.

Rehabilitation Act and ADA. The Boaters claimed that the GMP would make access to the park more difficult for disabled persons by removing certain docks and shelters. But the court rejected this claim, noting that more docks would be available under the GMP and few of the shelters being removed were readily accessible from any docks. Thus, the boaters could not make a credible claim of harm to handicapped users of the park.

In conclusion, although the Boaters were able to show that they had standing to sue, the court found none of their claims had merit. Thus, the Court dismissed the suit.

Isle Royale Boaters Ass'n v. Norton, No. 2:99-CV-152 (W.D. Mich. June 6, 2001).

Stuart J. Weiss