

Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information. The principal author of these regulations is Vincent G. Surabian, Office of the Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 602 are amended as follows:

**PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE**

Paragraph 1. The authority citation for part 31 is amended by removing the citation for "Section 31.6011(a)-4T" as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par 2. Section 31.6011(a)-4 is amended by revising paragraph (b) to read as follows:

**§ 31.6011(a)-4 Returns of income tax withheld.**

\* \* \* \* \*

(b) *Withheld from nonpayroll payments.* Every person required to withhold tax from nonpayroll payments for calendar year 1994 must make a return for calendar year 1994 and for any subsequent calendar year in which the person is required to withhold such tax until the person makes a final return in accordance with § 31.6011(a)-6. Every person not required to withhold tax from nonpayroll payments for calendar year 1994 must make a return for the first calendar year after 1994 in which the person is required to withhold such tax and for any subsequent calendar year in which the person is required to withhold such tax until the person makes a final return in accordance with § 31.6011(a)-6. Form 945, Annual Return of Withheld Federal Income Tax, is the form prescribed for making the return required under this

paragraph (b). Nonpayroll payments are—

- (1) Certain gambling winnings subject to withholding under section 3402(q);
- (2) Retirement pay for services in the Armed Forces of the United States subject to withholding under section 3402;
- (3) Certain annuities as described in section 3402(o)(1)(B);
- (4) Pensions, annuities, IRAs, and certain other deferred income subject to withholding under section 3405; and
- (5) Reportable payments subject to backup withholding under section 3406.

\* \* \* \* \*

**§ 31.6011(a)-4T [Removed]**

Par. 3. Section 31.6011(a)-4T is removed.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

**§ 602.101 [Amended]**

Par. 5. Section 602.101, paragraph (c) is amended in the table by removing the entry "31.6011(a)-4T....1545-1413".

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

Approved: April 5, 1996.

Leslie Samuels,  
*Assistant Secretary of the Treasury.*

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**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**36 CFR Part 13**

**RIN 1024-AC05**

**Glacier Bay National Park, Alaska: Vessel Management Plan Regulations**

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The National Park Service (NPS) is revising the regulations, including vessel quotas, that were established to protect the endangered humpback whale and other resources within Glacier Bay National Park and Preserve. The regulations authorize a modest increase in cruise ship, charter boat and private boat use, to be offset by specific mitigation measures. The regulations do not authorize an increase in the maximum number of motor vessels permitted to use the bay on any given day.

Subject to the existing maximum daily limit of two cruise ships per day, the regulations authorize an immediate 30-percent increase in cruise ship traffic during the 1996 and 1997 summer seasons (June 1 through August 31). Additionally, but contingent upon the completion of studies demonstrating that a further increase in cruise ship traffic would be consistent with protection of the values and purposes of Glacier Bay National Park and Preserve, the regulations could allow up to an additional 42-percent increase (*i.e.*, a total increase of 72% from existing 1995 levels) in cruise ship traffic beginning with the 1998 summer season. For each summer season thereafter, the regulations authorize the NPS to adjust the number of cruise ship entries, subject to the maximum daily limit of two vessels, based on available scientific and other information and applicable authorities. NPS has also revised current restrictions on seasonal entries and use-days for charter and private boats to authorize an 8-percent increase in charter boat traffic and a 15 percent increase in private boat traffic beginning with the 1996 summer season.

The regulations also extend and codify park compendium vessel regulations for the protection of park resource values. Several additional measures, such as the requirement for air, water and underwater noise pollution minimization plans from cruise ships, mitigate the potential resource impacts associated with the increase in vessel traffic. Finally, to protect park resource values and maintain opportunities for the safe use of kayaks, the regulations close six specified areas to motor vessels for varying periods.

**EFFECTIVE DATE:** This rule is effective on May 30, 1996.

**FOR FURTHER INFORMATION CONTACT:** Russ Wilson, Alaska Desk Officer, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127. Telephone 202-208-4874.

**SUPPLEMENTARY INFORMATION:**

Public Participation on the Proposed Rule

The National Park Service published proposed rules as well as a Notice of Availability of the Vessel Management Plan/Environmental Assessment (VMP/EA) on June 5, 1995 (60 FR 29523). The 60 day period for public comment closed on August 4, 1995, but was subsequently reopened from August 10, 1995 (60 FR 40798), until August 25, 1995, to accommodate several commenters who had requested an

extension. NPS received 427 timely comments. NPS held six open houses/public hearings on the VMP/EA and proposed regulations in Anchorage, Juneau, Gustavus, Hoonah, Pelican, and Elfin Cove. All meetings were taped and transcriptions of the tapes and written comments accepted at the hearings have been placed in the park file. The National Park Service has carefully considered each of these comments and has adopted several suggestions made by the commenters. Below is a summary of the comments and NPS's responses.

#### Summary of Comments and Decision

The NPS requested comments on the six alternatives considered in the VMP/EA. The alternatives included an array of vessel management options and provided varying levels of protection for sensitive resources.

Alternative 1 (no action) would not change existing vessel management. Vessel management would continue in accordance with existing regulations and the park compendium.

Alternative 2 would maintain existing levels of vessel entries for cruise ships, tour boats, and charter and private boats into Glacier Bay, while maximizing wilderness recreation opportunities through the seasonal closure of five designated wilderness waters to motor vessels.

Alternative 3 would increase seasonal vessel entry quotas for cruise ships by 30 percent, for charter boats by 8 percent and use days for private boats by 34 percent. Tour boat quotas would not change. The seasonal closure of five designated wilderness waters to motor vessels would enhance wilderness recreation opportunities.

Alternative 4 would optimize resource protection and wilderness recreation in Glacier Bay. Seasonal vessel entries would be reduced for cruise ships (-14%), tour boats (-22%), charter boats (-17%), and private boats (-17%). The seasonal closure of five designated wilderness waters to motor vessels would enhance wilderness recreation opportunities.

Alternative 5 (original proposed action) would optimize visitor-use opportunities in Glacier Bay by raising seasonal cruise ship entry quotas by 72 percent; the daily limit of two ships per day would continue. Daily limits of three tour boats, six charter boats and 25 private boats would continue. Seasonal entries and use-days for tour boats, charter boats, and private boats would not change from existing levels. In the preamble to the proposed regulations, however, the NPS also solicited comments on including an 8 percent increase in seasonal entries and use-days for charter vessels and a 15 percent increase in seasonal entries and use-days for private vessels. The seasonal closure of five designated wilderness waters to motor vessels would enhance wilderness recreation opportunities.

Alternative 6 would provide additional opportunities for motorized recreation. Seasonal vessel entries would be increased

for cruise ships (72%), charter boats (8%) and private boats (15%). Tour boat seasonal use-days would not change. The seasonal closure of five designated wilderness waters to motor vessels would enhance wilderness recreation opportunities.

The majority of commenters (about 85%) were opposed to Alternative 5, which included a 72-percent increase in cruise ship entries. Commenters were concerned that air quality, water quality, biological resources and visitor experience would be compromised by cruise ship increases. The majority of commenters (about 85%) favored Alternative 4, which proposed increased resource protection, additional wilderness recreation and decreased vessel entries. The majority of commenters (about 90%) wrote to support the proposed vessel closures or other proposed mitigation measures.

Based on public comment received on the VMP/EA and the accompanying regulations, the NPS has modified Alternative 5's (the proposed action) vessel quotas, vessel operating requirements and special-use area closures and restrictions. The modified action responds to the public's concern for the Glacier Bay environment and a more appropriate balance of vessel use by reducing the proposed cruise ship quota increase, while accommodating additional opportunities for visitor use of the park. The modified alternative includes modest increases for private and charter vessels, providing additional opportunities for visitor use of the park and the different types of visitor experiences that these vessels provide. Because most charter vessels are locally based, the increase in charter vessel use will also provide direct economic benefits to local communities.

Under the modified alternative, in 1996, seasonal entry quotas for cruise ships will increase by 30 percent; however, the daily limit of two ships per day will continue. On or before October 1, 1997, the superintendent of Glacier Bay National Park and Preserve is required to determine, with the approval of the NPS director, whether studies have been completed and sufficient scientific and other information have been developed to support an increase in cruise ship entries for the 1998 summer season (June 1 through August 31). This determination requires a finding that any seasonal increase in cruise ship entries would be consistent with protection of the values and purposes of Glacier Bay National Park and Preserve. Any increase would remain subject to the maximum daily limit of two vessels. NPS would publish a determination to increase cruise ship entries in the

Federal Register, with an opportunity for public comment. By October 1 of 1998, and of each year thereafter, the superintendent must determine, with the approval of the director, the appropriate number of cruise ship entries for the following summer season (June 1 through August 31), based on available scientific and other information and applicable authorities and subject to the maximum daily limit of two vessels. NPS would publish any determination to revise cruise ship entries (either to increase or decrease) in the Federal Register, with an opportunity for public comment.

The daily limit of three tour boats per day will not change. Daily limits of six charter boats and 25 private boats will continue. The NPS is modifying current restrictions on seasonal entries and use-days for charter and private boats to provide an 8-percent increase in seasonal entries and use-days for charter boats and a 15-percent increase in seasonal entries and use-days for private vessels. However, NPS recognizes that, because of the maneuverability of these smaller vessels and the challenge of achieving compliance with protective regulations, the increase in traffic from these vessels could result in impacts to park resources. Consequently, the private and charter vessel increases are authorized contingent upon the continued success of mitigation measures such as an educational orientation program for small vessel operators, favorable results from the compliance monitoring program, continued research on potential impacts to park resources, and—fundamental to all these measures—adequate resources for implementation. NPS intends to evaluate the small vessel programs annually.

Vessel operating requirements and the special-use area closures and restrictions included with this alternative will provide additional protection for sensitive resource values and increase the range and quality of visitor experience opportunities. The modified proposed action includes mitigating measures to further reduce the magnitude of effects of vessel and visitor use. These include an orientation/educational program; air, water, and underwater noise pollution control strategies; and an expanded park research, inventory and monitoring program. This combination of measures will facilitate monitoring and mitigate potential environmental effects resulting from increased vessel quotas.

## Analysis of Comments

### Research

All comments received that pertain to research stressed the need for additional research and monitoring of vessel traffic impacts to Glacier Bay. Several of these comments suggested that the study area include adjacent Icy Strait waters.

The NPS is formulating a comprehensive research, inventory and monitoring plan to assess the effects of vessel traffic on the values and purposes of Glacier Bay National Park and Preserve. The park's research, inventory and monitoring program will focus on obtaining baseline information on the coastal resources and physical characteristics of Glacier Bay; identifying and understanding the effects of vessel traffic on air quality, marine mammals, birds, visitor-use enjoyment and the economy of the region; and determining whether management strategies and mitigation measures are effectively protecting park purposes and values.

Beginning in 1996, NPS will expand research emphases. In addition to ongoing humpback whale and harbor seal monitoring, NPS studies will focus on behavioral changes of marine mammals in relation to vessels, and the relationship between critical prey species and marine mammal and bird populations and distribution. NPS will also develop protocols for monitoring vessel traffic distribution. These studies may encompass areas beyond the boundaries of the park, including Icy Strait waters, in cooperation with state and federal agencies. NPS management policy directs that parks having migratory species will ensure the preservation of their populations and their habitats inside the park and will cooperate whenever possible with others to ensure the preservation of their habitats outside the park. Management actions may include monitoring of those species outside the park to develop data for other agencies, such as the U.S. Fish and Wildlife Service and National Marine Fisheries Service. See, Management Policies, U.S. Department of the Interior, National Park Service, Chapter 4:7, Management of Migratory Animals (1988).

Research will also emphasize the use of new technologies to monitor underwater noise and air pollution emissions in partnership with other agencies, non-profit environmental organizations, universities and possibly the military. This type of research direction has cruise ship and tour boat operator support.

In addition to expanding studies in 1996, NPS will develop a research,

inventory and monitoring program for the park within one year. It will stipulate research and protection actions NPS will undertake to ensure that environmental effects do not exceed acceptable levels. This program will enhance the scientific basis for future adjustments in vessel quotas. NPS will make an annual report, detailing efforts, funding levels and personnel allocated to VMP actions available to the public.

One commenter noted that, in implementing the VMP requirement that cruise ships assess the short and long-term impacts of their activities on Glacier Bay resources through a research and monitoring program, it would be inappropriate for each cruise ship to assess the impact of only its activities, as a single cruise ship may be able to conclude that the impacts of its specific operation were negligible even though cumulative impacts may not be. Additionally, if each cruise ship performs its own assessment, NPS could well receive inconsistent studies based on different methodologies and assumptions. The final rule clarifies that, as the commenter suggested, these assessments will be performed pursuant to a comprehensive NPS research, inventory and monitoring plan. Several commenters expressed concern that motor vessel closures would disrupt or hamper research. However, NPS can allow approved research activities pursuant to the administrative exception contained in the regulations.

### Humpback Whales and Whale Waters

Numerous commenters suggested that all five areas proposed as whale waters in Alternative 3 should receive that designation to provide maximum protection for whales in these key habitats. On the other hand, a few commenters thought NPS should impose whale water restrictions only when whales are present because the restrictions are a hardship on motor vessel users. One commenter objected that the proposed regulations would not retain the requirement that NPS consult with other federal and state agencies and the public before designating whale waters in Glacier Bay.

The final regulations designate four of the five areas considered for designation as seasonal whale waters on a permanent basis. The final regulations also allow the superintendent to designate any area of Glacier Bay as temporary whale waters if whales concentrate in that area. Whale water restrictions that limit vessels to one mile from shore or mid-channel will become effective for lower bay waters on May 15, as proposed. This is two weeks earlier than currently imposed.

Implementing a mid-channel course earlier in the spring leaves near-shore habitat unoccupied by boats so that whales may move into the park through the narrow mouth of the bay with less disturbance. However, the NPS believes that imposing a speed limit automatically in mid-May, a measure which was more objectionable to boater/commenters than was the mid-channel (one mile from shore) requirement, could result in a loss of credibility and, therefore, reduced compliance if boaters do not see whales in the area. The NPS believes that the public will be better served if these speed restrictions can be imposed promptly when they are needed, and lifted when they are not. This approach requires that the superintendent have the flexibility to act quickly, as this rulemaking provides.

One commenter expressed concern that expanding whale waters, along with the mid-channel and one-mile-from-shore restriction for vessels, would preclude people from seeing wildlife along the shorelines. The NPS acknowledges that, while in whale waters, the regulations would prohibit a vessel within a mile from shore from motoring parallel to the shore. However, motor vessels may travel perpendicularly (by the most direct line) to shore through whale waters to view or photograph wildlife (other than whales) or land on an otherwise unrestricted shore to camp or participate in any other park activity.

### Seals

One comment suggested closing Johns Hopkins Inlet during seal pupping from an imaginary line from Jaw Point to Topeka Glacier and south. The NPS has adopted a line running due west from Jaw Point that closes virtually the same area and still provides a view of Johns Hopkins Glacier. Additionally, Johns Hopkins Inlet (south of the line running due west of Jaw Point) will remain closed to cruise ships from July 1 through August 31, to protect significant concentrations of molting harbor seals from disturbance by the increase in cruise ship traffic.

### Sea Birds

In response to comments, including one from the U.S. Fish and Wildlife Service (FWS) that direct observations by FWS biologists at Glacier Bay and elsewhere indicate that a 100-foot closed area around seabird nesting colonies is inadequate to prevent disturbance to birds at nesting colonies, NPS has instead adopted a 100-yard closure, except at the southern one-half of South Marble Island where a 50-yard closure will apply.

Many visitors on tour boats in Glacier Bay National Park consider viewing birds at the South Marble Island a highlight of their trip. This bird viewing has caused no apparent changes in the bird population on this island. The excitement people feel on seeing a puffin, kittiwake, or pigeon guillemot can, however, change the way they feel about birds and the places where they can be found. This change can translate into conservation and resource protection for parks where similar wildlife exists. Prior to 1991, there was no restriction on approaching the South Marble Island birds; subsequently, NPS established a 100-foot distance. There have been no apparent changes to the bird population on this island. With this rulemaking, NPS is establishing a 50-yard distance for South Marble Island to provide the birds additional protection but still accommodate the visitor's ability to view the birds.

#### *Air Quality*

Most of the comments received concerning air quality expressed concern that the NPS was not doing enough to ensure good air quality at Glacier Bay. In order to protect the air quality of Glacier Bay National Park and Preserve, the NPS has taken four significant steps: (1) the NPS has adopted marine vessel visible emission standards; (2) the NPS will require every cruise ship to prepare and abide by an NPS-approved pollution minimization plan to assure that, to the fullest extent possible, cruise ship companies permitted to travel within the park apply the industry's best approaches toward pollution minimization; (3) the NPS will consider a cruise ship company's demonstrated ability to minimize pollution as a strongly weighted preference for entry permits subject to competitive allocation; and (4) the NPS has dropped a competitive preference that favored a cruise ship company whose route of travel included both the Tarr Inlet and Johns Hopkins Inlet. With regard to this last step, only a Tarr Inlet stop will receive preference, thereby ensuring that park visitors aboard the ship have an opportunity to see superlative sights in Glacier Bay without the ship's slowing down and turning an additional time, a maneuver that tends to increase stack emissions and concentrate them in one area. The NPS will increase its efforts to monitor and study air quality as part of its comprehensive research program and will amend the standards if amendments are required to protect the values and purposes of Glacier Bay National Park and Preserve.

One commenter pointed out that just prior to the publication of the proposed regulations, the State of Alaska revised its air quality regulations by relaxing the opacity standards for vessels in ports. Since neither the state nor the NPS considers Glacier Bay a "port," the regulations which the NPS adopts today are substantially the same as current state regulations applicable to Glacier Bay. If the State of Alaska adopts more restrictive (i.e., protective of park environmental values) laws and regulations concerning visible emissions, NPS will incorporate such provisions in these regulations.

#### *Water Pollution Control Strategies*

In response to comments, NPS will implement pollution control strategies to mitigate the increase in vessel traffic with the additional resource protection requirement that cruise ships develop oil spill vessel response plans (VRP). Cruise ship operators must submit VRP for review and approval prior to conducting operations in Glacier Bay National Park. The VRP must meet planning and response standards similar to those identified in U.S. Coast Guard regulations for tank ships (33 CFR Part 155). The VRP will in part develop alternate response strategies for most probable and worst case spill scenarios, and will identify personnel, equipment and other spill response resources that can be timely deployed in response to a spill event. Recent cruise ship groundings in Alaska that resulted in oil spills have highlighted the need for advance planning and preparation, particularly since there is no pollution response contractor in Southeast Alaska that can provide a reasonably timely response to a spill event. The NPS will work with the cruise ship industry to develop VRPs that protect park resources while providing flexibility to the industry to meet established planning and response standards and criteria.

#### *Underwater Noise Reduction*

To mitigate the effects of underwater noise in Glacier Bay, the NPS will require every cruise ship to prepare and abide by an NPS-approved underwater noise pollution minimization plan. The NPS will also consider a cruise ship company's demonstrated ability to minimize underwater noise pollution as a strongly weighted preference for entry permits subject to competitive allocation. Several cruise ship industry commenters were critical of the NPS proposal that competitively allocates entry permits, granting a preference to vessels that can demonstrate minimization of air and underwater

noise pollution. These commenters questioned whether a sufficient scientific link exists, for example, between underwater noise and humpback whales or other marine mammals. They also questioned the ability of the industry to respond where there are no established standards. However, another commenter suggested that NPS should use competitive allocation of entry permits to challenge companies to devise effective strategies to minimize their impacts.

Ensuring air and water quality in national parks is fundamental to the congressionally mandated mission of the NPS to conserve scenery, natural objects and wildlife "unimpaired." Air quality studies of cruise ships in Glacier Bay demonstrate an obvious air pollution impact. See, Vequist, Frequency of Cruise Ship Stack Emissions in Glacier Bay (NPS VMP/EA p. 3-22). The NPS also believes that studies have established a sufficient scientific connection concerning vessel noise and changes in whale behavior to warrant a preference for quiet-running ships. See, NMFS Biological Opinion, February 19, 1993 (NPS VMP/EA Appendix D, p. 10-12). For the most part, NPS has established a goal and left industry the flexibility and incentive to figure out the best and most economic way to achieve it.

#### *Cruise Ship, Tour Vessel and Charter Vessel Definitions*

The regulations amend the existing definition, which is based solely on the United States System of classification (100 gross tons, U.S. System), by adopting an additional definition of vessel categories which references the International Convention System. United States (U.S.)-flagged vessels are classified under the U.S. System, foreign-flagged vessels under the International Convention System. Since all of the cruise ships and some of the tour boats operating in Glacier Bay National Park are foreign-flagged vessels, the regulations will now reference both tonnage systems in the definitions. Although the different systems are not directly comparable, NPS intends the two measures in the definition to be roughly equivalent and to maintain the status quo.

One cruise ship company asked that the 2,000 gross tons (GT) threshold tonnage (International Convention System) demarcating the line between tour vessels and cruise ships be raised to 20,000 GT. This recommendation, however, would substantially change the current demarcation between cruise ships and tour vessels and consequently allow substantial increases in the size of

tour vessels. The potential environmental consequences of this change have not been studied. More information on certain environmental impacts may become available in the future, as a result of recently initiated vessel acoustics studies with Cornell University and similar research which the park hopes to undertake with the U.S. Navy. Until then, the NPS believes that the 2,000 GT limit (International Convention System) should not be increased until there are specific findings, based on research, monitoring and other relevant information, that adverse consequences would not result.

In response to a comment, NPS has modified the definition of "charter vessel" slightly to allow use of a charter vessel to provide scheduled kayak and camper drop-off and pick-up service. Due in part to size, and in part to keeping continuity in tour presentations, tour vessels can only provide ferry service to a limited number of locations. By allowing charter vessels to augment this service, the NPS hopes to better disperse kayak and shore-based recreational impacts.

In response to another comment, NPS has modified the definition of "tour vessel" in the proposed regulation to remain similar to the existing regulations, with respect to including smaller vessels operating on a regularly scheduled route. Omission of this portion of the existing regulations from the proposed regulation was an error. Continued omission would have the unintended effect of excluding tour vessels operating under current NPS concession permits. The NPS will continue to determine that a proposed visitor service is both necessary and appropriate prior to permitting any smaller vessel as a tour boat.

#### *Cruise Ship Entries*

Public comment was overwhelmingly (approximately 90 percent) opposed to an immediate 72-percent increase in cruise ship traffic. As one commenter noted, a modest increase in cruise ship traffic is more consistent with the 1993 NMFS Biological Opinion, which urges the NPS to take a conservative approach in vessel increases. This rulemaking adopts such an approach. The several mitigation measures—including air, water and underwater noise pollution mitigation plans; closures of areas to motorized use; increased efforts to educate the visiting public and increased enforcement actions; plus the commitment to a focused research plan for the bay—should help protect against potential impacts of the vessel increases. The NPS is additionally mindful of its obligation to reduce

entries should the additional traffic affect humpback whales, Steller sea lions, other wildlife, or any other values or purposes of Glacier Bay National Park and Preserve. NPS management policies concerning public use state that, although restrictions on recreational use should be limited to the minimum necessary to protect visitor safety and enjoyment, such restrictions may be required—

when, in the judgment of the superintendent [a use or activity's] occurrence, continuation, or expansion would result in the derogation of the values or purposes for which the park was established, interfere significantly with the enjoyment of park resources and values by other visitors or be inconsistent with the park's enabling legislation or proclamation.

Management Policies, U.S. Department of the Interior, National Park Service, Chapter 8:2, Management of Recreational Use (1988).

This rulemaking requires vessels increases to be considered and implemented incrementally, as suggested by several commenters. With respect to the modest increases in vessel traffic authorized by this final rule for the 1996 and 1997 summer seasons, the NPS believes that the rule provides sufficient mitigation and other protective measures to assure protection of Glacier Bay resources and values. However, with respect to any future increases beginning in 1998, the NPS will examine research, inventory and monitoring results from the planned new studies in addition to existing scientific knowledge, and determine in the context of applicable authorities (e.g., 16 U.S.C. 1, *et seq.*) whether further increases are appropriate. In this regard, NPS Management Policies direct that to the extent practicable, NPS should base its public use limits on the results of scientific research and other available support data. When, as here, that use has the potential to impact park purposes and values, including a threatened species and an endangered species—and virtually all conceivable mitigation measures have been implemented—a finding to expand a public use would require specific findings of no adverse impact to those resources based on research, inventory, monitoring, and other relevant information. If circumstances arise where scientific and other information is lacking, ambiguous, or inconclusive, the superintendent must err on the side of protecting resources. This rulemaking ensures that the NPS has the discretion to adjust cruise ship entries should an adjustment be advisable or required to protect the park's resources and values.

Several commenters noted that additional entries into Glacier Bay may

lead to cruise ship companies dropping other Alaska ports from their schedule to the detriment of the economy in those communities. The NPS acknowledges that there may be some schedule changes; however, by adopting a more modest increase in entries at the present time and allowing for potential incremental increases later, disruption should be minimal as the industry and ports adjust.

A number of commenters also noted critically that cruise ships are generally foreign-built, foreign-owned, foreign-flagged vessels, and employ mostly foreign crew. Although this observation is true, the NPS has focused this rule on its statutory mission, *i.e.*, assuring protection of park resources and values and providing for their enjoyment so as to "leave them unimpaired for the enjoyment of future generations." 16 U.S.C. 1.

Other comments suggested that the cruise ship evaluation process should include not only environmental criteria, but criteria concerning whether people are traveling on a ship for reasons that relate to the park (as opposed to other unrelated activities). In the process of competitively awarding cruise ship entries, the NPS has and will continue to consider the extent to which a company's cruise itinerary and on-board passenger activities focus on park purposes.

One commenter wrote to suggest that the park should recover more substantial fees from cruise ship companies. Under present law, the franchise fees collected from concessionaires at national parks generally go to the U.S. Treasury. The NPS supports legislative proposals pending before Congress that would direct increased concessionaire and admission fee revenues directly to the parks for investment in their long-term care.

#### *Tour, Charter and Private Vessel Entries*

Commenters' suggestions ranged from calls for no additional entries in these categories to calls for increases. Over the last three summer seasons, Glacier Bay park staff have had to turn away an increasing number of private boaters, with the trend expected to continue. The final rule establishes a 15-percent increase in private vessel seasonal entries and use-days which will accommodate more visitor-use opportunities in early June and late August, periods when the daily-use limit of 25 private vessels has not been filled in the past. The final rule also establishes a modest increase in charter vessel seasonal entries and use-days (8-percent). This action improves visitor

opportunities for this type of park experience, and at the same time tends to benefit the economies of local communities. As with other vessel categories the final rule does not increase the daily limit of charter vessels permitted in Glacier Bay (*i.e.*, six per day). The regulations that NPS published as part of the proposed rule included the respective 8- and 15-percent increases in seasonal entries and use-days. Therefore, this final rule retains the seasonal entry and use-day increases in charter and private vessels, as published in the proposed rule.

Tour boat companies, in particular, suggested that tour boats should receive more entries. Several suggested that some of the entries that NPS proposed for cruise ships should instead go to tour boats. NPS believes that increased opportunities for people to visit the bay can best be provided by modest increases in entries and use-days within the existing vessel-per-day limits. Generally, the increased traffic will occur on the shoulder seasons, not in mid-summer. Tour boats are currently operating at the maximum allowed number of three vessels per day during the summer season.

#### *Commercial Fishing Vessels*

Commenters were divided on the issue of how and whether commercial fishing vessels should be managed in Glacier Bay. NPS published proposed regulations concerning commercial fishing in Glacier Bay National Park on August 5, 1991 (50 FR 37202). NPS is reviewing the larger issue of the future of commercial fishing within Glacier Bay National Park in a separate effort that may result in additional regulations. The seasonal motor vessel closures included within today's rulemaking will apply to commercial fishing vessels, as well as all other types of motorized vessels and seaplanes. However, this rule continues the exemption that commercial fishing vessels actually engaged in commercial fishing have from the seasonal entry and daily use limits that apply to other vessel types.

#### *Kayaks*

Comments ranged from increasing kayak use to limiting it. Some commenters felt that NPS needs more data on kayak use, so that resource impacts from associated uses such as on-shore camping could receive more detailed consideration in the VMP/EA. NPS is establishing a backcountry monitoring program to establish levels of use and assess impacts. NPS will also continue to restrict camping in certain shoreline areas as necessary to limit

camper impacts on bears and other resources. One commenter suggested that safety concerns based on the potential impacts of vessel wakes on kayakers had been exaggerated. For several reasons, however, NPS believes that the safety concerns are real, particularly in the cold and remote waters of Glacier Bay. One commenter suggested that NPS should require kayakers visiting Glacier Bay to attend an educational program on the use of the bay. NPS currently provides a kayaker/camper orientation program, which NPS plans to continue, improve, and perhaps make mandatory at some future date if such a requirement can reduce resource impacts and improve visitor safety.

#### *Concession Boats*

One commenter suggested that NPS should not allocate entry permits to charter vessels based in Bartlett Cove that operate sport fishing charters in Icy Strait waters outside the park; rather this commenter thought that such vessels should be encouraged to operate out of Gustavus. NPS believes that this comment has merit. To ensure that Bartlett Cove serves as a base for in-park activities (and not as a base for out-of-park sport fishing), NPS will assess vessels that exit the bay an additional entry upon return. Additionally, NPS will require Bartlett Cove-based charters to submit a park-based operations plan. As the commenter notes, out-of-park activities can better be served from Gustavus. This serves both the park (by reducing traffic through much of the lower bay whale waters) and the park visitor (by providing incentive for use of limited charter entries within the park). Local community economies may also benefit from visitors seeking charter sport fishing opportunities out of the park.

#### *Bareboat Charters*

As commonly used, "bareboat charter" means chartering a vessel without master (captain) or crew. Comments ranged from one that suggested prohibition of bareboat charters, except by companies registered by park management and familiar with park management principles, to one of support for bareboat rentals. One commenter suggested that the bareboat charters should not take permits from the pool of permits available to private citizens wishing to enter the park with their own boats. The NPS has reconsidered its position on bareboat charters. Basing another commercial service in Bartlett Cove would increase congestion at the already over-taxed facility. If the demand exists for a

bareboat operation, commercial services could be more appropriately based out of Gustavus. NPS would require bareboat charters wanting access to the park to acquire an entry permit (and attend the orientation program), as would any other private boater.

#### *NPS Boats*

Several commenters wrote to suggest that NPS consider its own vessel use when proposing to restrict private motorized vessel access. One commenter stated that the VMP/EA did not analyze the potential increase in government vessel operations resulting from additional monitoring, research, resource protection and incident responses associated with this rulemaking. NPS examined its own vessel activities as part of the VMP/EA (*see*, p. 4.7-1). The NPS anticipates only a slight increase in its own vessel traffic as a result of the modest increase in other traffic authorized by this rulemaking. That increase will consist primarily of naturalist transfers to and from the additional cruise ships as the ships enter and exit the bay, and increased research activities. Other commenters were concerned that closures to motorized vessels, including research vessels during the summer season, would severely handicap ongoing scientific studies in Glacier Bay. NPS may approve research activities for closed areas pursuant to the administrative exception contained in these regulations.

#### *Wildlife Protection/Wilderness Waters*

Generally, support for and opposition to wilderness water closures was equally divided. Commenters sometimes supported particular closures but not others. Specific comments concerning Dundas Bay opposed the proposed closure. Dundas Bay will remain open to motor vessels, in part to allow Elfin Cove residents motorized access to sheltered park waters. In response to commenters, NPS would like to assure the public that it has drawn virtually all of the closure boundaries to allow access to anchorages at the mouths of the various areas. Wildlife protection/wilderness water closures will take effect annually on May 1 (as in the proposed rule).

#### *East Arm Waters*

Generally, support for and opposition to east arm water closures to motorized vessels was equally divided. However, some commenters from both "camps" preferred a closure higher up the east arm. NPS has adopted this modification, which allows more motor vessel access to the east arm and its anchorages. It

provides kayakers with solitude, wilderness recreation and access to tidewater glaciers without motorized vessel disturbance without having to undertake a multi-day trip. The closure also mitigates a safety concern associated with kayaker susceptibility to being overturned by vessel wakes. Another comment that the NPS has adopted suggested splitting the summer season and alternating closures in some areas. This suggestion readily lent itself to the upper east arm: June 1 through July 15, the park will close Muir Inlet waters north of the McBride Glacier to motor vessels and seaplane landings, and July 16 through August 31, the park will close Wachusett Inlet (except the first anchorage) to motor vessels and seaplane landings. The alternating motor vessel closures in the east arm will allow, both visitors using motors and visitors seeking quiet, summertime access to an east arm tidewater glacier and the natural resources of Muir or Wachusett Inlets on a time sharing basis. Furthermore, alternating the closures allows the east arm to continue to serve as a motor vessel destination, thereby dispersing vessel use generally and reducing vessel crowding in the west arm.

#### *Bartlett Cove Access*

Two commenters suggested alternative entry demarcation lines to the current line at the mouth of Glacier Bay (Point Carolus-to-Point Gustavus). The suggestions would leave access to Bartlett Cove unrestricted. The adoption of these suggestions would result in an unpredictable increase in vessel traffic throughout the area of the park that attracts the highest concentration of whales, *i.e.*, lower bay whale waters. Therefore, NPS cannot adopt either of these suggestions. Until additional monitoring and studies have been completed and information has been developed on the interaction of vessels and whales that supports specific findings of no adverse impact, NPS cannot authorize increased access to Bartlett Cove.

#### *Orientation Program*

One commenter suggested that NPS waive the orientation program on repeat visits. The proposed and final regulations give the superintendent discretion to waive the program.

#### *Other Restrictions*

In response to comments, NPS has modified the superintendent's discretionary closure authority. NPS previously determined and still recognizes the need to provide temporary and intermittent

administrative remedies to protect whales through imposition of public-use limits, whale-water designations, and other operating restrictions. See, 50 FR 19880, 19881-82 (May 10, 1985). The environmentally safe implementation and maintenance of the increased public-use levels authorized in this rulemaking require that the superintendent have the necessary authority to modify public use levels and establish vessel restrictions in response to changing conditions in order to protect all the park's resources. The final rule authorizes the superintendent to impose such conditions separately or as permit requirements to ensure the least possible impact to park resources, as whale and other wildlife feeding, breeding, and molting sites shift to new areas in the dynamic sea and landscape of the rebounding bay.

#### *Section-by-Section Analysis*

Section 13.65(b)(1) of the regulations defines various types of vessels and other terms used in this section. The rule retains most of the definitions without significant revision from the existing regulations. However, there are exceptions:

The rule revises the terms "cruise ship," "charter vessel" and "tour vessel." In addition to some technical revisions, the proposed definitions include a measurement standard based on the rules of the International Convention on Tonnage Measurements of Ships, 1969. Congress has provided for recognition of these rules that are generally used to measure and certify foreign hull vessels. See, Omnibus Budget Reconciliation Act of 1986, Title V—Maritime Programs, Part J—Measurement of Vessels, P.L. 99-509, 100 Stat. 1919 (codified as amended in scattered sections of 46 U.S.C.). The NPS has adopted a definition of cruise ship that includes a vessel with an International Tonnage Certificate at or exceeding 2,000 tons gross (that carries passengers for hire). The rule defines a vessel with an International Tonnage Certificate less than 2,000 tons gross (that carries passengers for hire) as a tour vessel or a charter vessel. The rule also retains the existing standards, based on the U.S. method for measuring vessels. The rule modifies the term "charter vessel" to allow scheduled camper or kayak drop-off and pick-up service. The rule expands the terms "operate" and "operating" to include the actual or constructive possession of a vessel. NPS has done this to enable enforcement action against vessels violating permit or closed-water restrictions when the vessel is not

underway at the time of the violation. The rule adopts definitions for two new terms as a means to retain, clarify, and codify both restricted and permitted activities that were authorized and implemented under the existing 13.65(b)(2)(iii) whale-waters regulations. The first, "speed through the water," is analogous in aeronautical terms to "airspeed," as opposed to "ground speed." NPS has measured and enforced whale-water speed limits in this manner to prevent collisions between vessels moving rapidly "up-current" and whales or other marine mammals that are drifting "down" in the tidal current. These speed limits also lower the level of underwater noise by limiting high engine revolutions that can disrupt whale feeding activities. The rule defines the term "transit" to allow vessels to approach perpendicularly and land on an otherwise unrestricted shore within designated whale waters in order to view or photograph wildlife (except whales), camp or participate in any other park activity. The rule deletes the term "whale season" and includes the dates on which closures or restrictions begin and end as part of the regulation.

Section 13.65(b)(2) of the regulations authorizes a 30-percent increase in cruise ship traffic during the 1996 and 1997 summer seasons (June 1 through August 31). However, there would be no increase in the maximum number of cruise ships permitted to use the bay on any given day (two). Rather, this increase in traffic will be absorbed by distributing the additional entries throughout the summer season. Additionally, but contingent upon the completion of studies demonstrating that a further increase in cruise ship traffic would be consistent with protection of the values and purposes of Glacier Bay National Park and Preserve, the regulations could allow up to an additional 42-percent increase (from existing 1995 levels) in cruise ship traffic beginning with the 1998 summer season. For each summer season thereafter, the regulations authorize the NPS to adjust the number of cruise ship entries, subject to the maximum daily limit of two vessels, based on available scientific and other information and applicable authorities. In determining whether to authorize future increases in cruise ship entries, NPS must err on the side of protecting park resources and values, particularly where the scientific information is lacking, ambiguous, or inconclusive. NPS will publish any future adjustment to cruise ship traffic within the scope of these regulations in the "Notice" section of the Federal Register, with opportunity for comment.

The rule revises current restrictions on seasonal entries and use-days for charter and private boats to authorize an 8-percent increase in charter boat traffic and a 15-percent increase in private boat traffic beginning with the 1996 summer season.

This section also provides for reinitiation of consultation with NMFS to ensure that the potential vessel traffic contemplated by these regulations does not affect endangered or threatened species, particularly in Glacier Bay National Park and Preserve. The section also requires the director of the NPS to reduce vessel entry and use levels if necessary to protect the values and purposes of Glacier Bay National Park and Preserve.

Section 13.65(b)(2)(A) requires cruise ships to prepare, and abide by, an NPS-approved air, water and underwater noise pollution minimization plan to be permitted to enter Glacier Bay. Section 13.65(b)(2)(B) clarifies that each cruise ship company's assessment of the impacts of its activities on Glacier Bay resources must correspond to the NPS research, inventory and monitoring plan. Section 13.65(b)(2) also incorporates the permit requirements of section 13.65(b)(3) of the existing regulations, with minor modifications. Paragraph (b)(2)(i)(B) generally requires private motor vessels entering the bay through the mouth to stop at the Bartlett Cove Ranger Station for orientation before proceeding up bay. Vessels that have previously visited the bay may receive a waiver. Paragraph (b)(2)(ii)(E) requires concessioner vessels to notify the Bartlett Cove Ranger Station within the 48 hours prior to, or immediately upon, entry to the bay. Paragraph (b)(2)(iii)(C) allows private vessels to launch a motorized skiff or tender after anchoring. Paragraph (b)(2)(iv) prohibits permit and operating violations and clarifies the superintendent's authority to revoke or deny a permit based on a violation.

Section 13.65(b)(3) of the regulations retains the existing prohibitions on operating a vessel within one-quarter nautical mile of a whale, and on pursuing or attempting to pursue a whale. It also retains the superintendent's authority to designate temporary whale waters and establish vessel use and speed restrictions. The regulations identify, and designate as whale waters, areas in which seasonal restrictions have applied on a recurring basis. The regulations codify the restrictions that were implemented pursuant to section 13.65(b)(2) of the existing regulations, i.e., mid-channel transit through these waters, and in the

case of lower bay waters, speeds not to exceed 20 knots.

As whales have been known to arrive at the mouth of Glacier Bay in May, the 20-knot speed limit and the requirement that vessels in transit stay one nautical mile off-shore become effective in the designated lower bay waters each year on May 15. This earlier date ensures that whales arriving at the mouth of Glacier Bay in late spring are able to pass with minimal disturbance through the narrow entrance to Glacier Bay to access feeding areas. When whales are present, the superintendent will impose a 10-knot speed limit ((b)(3)(v)(A)(2)). The rule also establishes a speed restriction to mitigate mortality and stress of breeding and molting harbor seals resulting from large vessel wakes in the narrow confines of the Johns Hopkins Inlet (paragraph (B)).

Seasonal closures and operating restrictions concerning the Spider Island group and Johns Hopkins Inlet that appear in paragraphs (b)(3)(vi) (C)–(F) will also protect the park's large concentration of breeding harbor seals. Except for the continuing Johns Hopkins Inlet cruise ship closure, the park has previously enforced these restrictions as park compendium regulations. Paragraphs (b)(3)(vi) (A)–(B) afford year-round protection to Steller sea lions and their haul-outs, and nesting sea bird colonies are protected seasonally and through year-round vessel landing and foot traffic closure of colonial nesting islands. Park compendium regulations previously protected these small islands seasonally. Continuing these restrictions year-round will reduce impacts to vegetation that is important to nesting birds and will otherwise protect this sensitive nesting habitat from trampling. These closures are consistent with NMFS and FWS recommendations. Paragraph (b)(3)(vi)(G) advises park visitors that the distances established by this rulemaking to be maintained between visitors and wildlife are minimum distances; 36 CFR 2.2 (wildlife protection) requires that greater distances be maintained from wildlife if it is likely that wildlife may be disturbed or frightened.

Seasonal water (area) closures for motor vessels protect nesting sea birds as well as molting and feeding waterfowl (paragraphs (b)(3)(vii)(A) (1)–(4)). These closures also protect harbor seal haul-outs associated with pupping and molting activities (paragraph (4)). NPS previously proposed similar closures for these areas (48 FR 14978, April 6, 1983). That rulemaking also recognized the importance of sheltering the unique concentrations of marine

mammals and birds in these areas from motorized disruption during the critical months of feeding, breeding, nesting and rearing of young. With the exception of Rendu Inlet, these areas contain, or are approached through, shallow areas that are hazardous to navigate in motor vessels.

Paragraphs (b)(3)(vii) (B)–(C) adopt alternating motor vessel closures for the waters of the Muir Inlet north of McBride Glacier (June 1 through July 15) and the Wachusett Inlet (July 16 through August 31). NPS adopts these closures to prevent detriment to park resource values, including the opportunity for kayaking, camping, and engaging in other backcountry use away from the noise and intrusion of motor vessel traffic. Motor vessels can use these areas on a time-sharing basis. As discussed above, the NPS believes that the closures adopted in paragraphs (b)(3)(vi) and (b)(3)(vii)(A) are necessary to protect the natural resource values of Glacier Bay; and the closures adopted in paragraphs (b)(3)(vii) (B)–(C) are necessary to protect the visitor experience and recreational resource values of Glacier Bay. All closures are promulgated in accordance with ANILCA Section 1110(a) to prevent detriment to the resource values of Glacier Bay National Park and Preserve, including its wildlife and other natural resources as well as its opportunities for quiet and solitude.

To provide quiet at popular anchorages, section 13.65(b)(3)(viii) restricts generator and other non-propulsive motor use during the evening hours of summer.

Section 13.65(b)(3)(ix) clarifies the duties, responsibilities, and authority of the superintendent to regulate public use in response to changing conditions.

Section 13.65(b)(4) of the regulations adopts restrictions on marine vessel air pollution (stack) emissions.

NPS is addressing section 13.65(b)(5)–(6) of the existing regulations, *Restricted Commercial Fishing Harvest*, separately (see, proposed rules at 56 FR 37262 (August 5, 1991)); commercial fishing is not considered as part of this rulemaking. However, the seasonal closure of water areas to vessels ((b)(3)(vi) and (b)(3)(vii)) also applies to commercial fishing boats.

#### Drafting Information

The primary authors of this rulemaking are Russel J. Wilson, Alaska Field Office, National Park Service, and Molly N. Ross, Office of the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, Washington, D.C. Glen Yankus, NPS Alaska System Support Office, and

Randy King, Kevin Apgar and Mary Beth Moss, Glacier Bay National Park and Preserve also made significant contributions.

#### Administrative Procedures Act

In accordance with the Administrative Procedures Act (5 U.S.C. 553(d)(3)), the NPS has determined that publishing this rule 30 days prior to the rule becoming effective would delay effective implementation of this plan for the rapidly approaching summer season. This would be contrary to the public interest and the protection of park resources. Approximately 45 days were lost during the preparation of this plan due to the government shutdown. Wildlife protection provisions contained in the regulations are intended to take effect on May 1, and vessel traffic permit provisions apply as of June 1. NPS requires some lead time in order to inform the public and handle permit scheduling. Since NPS believes that all elements of this rule are inextricably linked—*e.g.*, the increases in vessel traffic must be balanced by the environmental protections—NPS has decided to invoke the “good cause” exception and make the entire rule effective upon publication. Therefore, under the “good cause” exception of the Administrative Procedures Act (5 U.S.C. 553(d)(3)), and as discussed above, it has been determined that this rulemaking is exempted from the 30 day delay in effective date, and shall become effective on the date published in the Federal Register.

#### Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in this final rule at § 13.65(b)(2), have been approved by the Office of Management and Budget and assigned clearance number 1024-0026. This information is being collected to solicit information that is necessary for the Superintendent to issue motor vessel permits. The public is being asked to provide this information in order for the park to track the number of permits issued and to whom they are issued. Should the park need to contact the permittees, a mechanism will be in place to allow them to do so.

Additionally, cruise ships, tour vessels and charter vessels will be issued permits in accordance with NPS concession authorizations. To obtain or renew an entry permit, cruise ship companies will prepare and, after approval, implement a pollution minimization plan to assure, to the fullest extent possible, that any ship

permitted to travel within Glacier Bay will apply the industry’s best approaches toward vessel oil-spill response planning and prevention and minimization of air, water and underwater noise pollution while operating in Glacier Bay. Such plan will be submitted to the superintendent, who may approve or disapprove the plan.

The information will be used to grant administrative benefits and there is an obligation to respond.

#### Compliance With Other Laws

This final rule has been reviewed under Executive Order 12866. The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This regulation was subject to National Environmental Policy Act compliance and an Environmental Assessment (EA) was completed. Based on the information contained in the EA, a Finding of No Significant Impact (FONSI) was determined.

#### List of Subjects in 36 CFR Part 13

Alaska, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS amends 36 CFR Chapter I as follows:

### **PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA**

1. The authority citation for part 13 is revised to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; § 13.65 also issued under 16 U.S.C. 1a-2(h), 20, 1361, 1531, 3197.

#### **Subpart C—Special Regulations—Specific Park Areas in Alaska**

2. Section 13.65 is amended by revising the heading of paragraph (b) and paragraphs (b)(1) through (b)(4) to read as follows:

##### **§ 13.65 Glacier Bay National Park and Preserve.**

\* \* \* \* \*

(b) *Resource protection and vessel management*—(1) *Definitions*. As used in this section:

*Charter vessel* means any motor vessel under 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) that is rated to carry up to 49 passengers, and is available for hire on an unscheduled basis; except a charter vessel used to provide a scheduled camper or kayak drop off service.

*Commercial fishing vessel* means any motor vessel conducting fishing

activities under the appropriate commercial fishing licenses as required and defined by the State of Alaska.

*Cruise ship* means any motor vessel at or over 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) carrying passengers for hire.

*Entry* means each time a motor vessel passes the mouth of Glacier Bay into the bay; each time a private vessel activates or extends a permit; each time a motor vessel based at or launched from Bartlett Cove leaves the dock area on the way into Glacier Bay, except a private vessel based at Bartlett Cove that is gaining access or egress to or from outside Glacier Bay; the first time a local private vessel uses a day of the seven use-day permit; or each time a motor vessel is launched from another vessel within Glacier Bay, except a motor vessel singularly launched from a permitted motor vessel and operated only while the permitted vessel remains at anchor, or a motor vessel launched and operated from a permitted motor vessel while that vessel is not under way and in accordance with a concession agreement.

*Glacier Bay* means all marine waters contiguous with Glacier Bay, lying north of an imaginary line between Point Gustavus and Point Carolus.

*Motor vessel* means any vessel, other than a seaplane, propelled or capable of being propelled by machinery (including steam), whether or not such machinery is the principal source of power, except a skiff or tender under tow or carried on board another vessel.

*Operate* or *Operating* includes the actual or constructive possession of a vessel or motor vessel.

*Private vessel* means any motor vessel used for recreation that is not engaged in commercial transport of passengers, commercial fishing or official government business.

*Pursue* means to alter the course or speed of a vessel or a seaplane in a manner that results in retaining a vessel, or a seaplane operating on the water, at a distance less than one-half nautical mile from a whale.

*Speed through the water* means the speed that a vessel moves through the water (which itself may be moving); as distinguished from “speed over the ground.”

*Tour vessel* means any motor vessel under 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) that is rated to carry more than 49 passengers, or any smaller vessel that conducts tours or provides transportation at regularly scheduled times along a regularly scheduled route.

*Transit* means to operate a motor vessel under power and continuously so as to accomplish one-half nautical mile of littoral (*i.e.*, along the shore) travel.

*Vessel* includes every type or description of craft used as a means of transportation on the water, including a buoyant device permitting or capable of free flotation and a seaplane while operating on the water.

*Vessel use-day* means any continuous period of time that a motor vessel is in Glacier Bay between the hours of 12 midnight on one day to 12 midnight the next day.

*Whale* means any humpback whale (*Megaptera novaeangliae*).

*Whale waters* means any portion of Glacier Bay, designated by the superintendent, having a high probability of whale occupancy, based upon recent sighting and/or past patterns of occurrence.

(2) *Permits*. The superintendent will issue permits for private motor vessels in accordance with this part and for cruise ships, tour vessels, and charter vessels in accordance with National Park Service concession authorizations and this part.

(i) *Private vessel permits and conditions*. Each private motor vessel must have a permit to enter Glacier Bay June 1 through August 31.

(A) The superintendent may establish conditions regulating how permits can be obtained, whom a vessel operator must contact when entering or leaving Glacier Bay, designated anchorages, the maximum length of stay in Glacier Bay, and other appropriate conditions.

(B) June 1 through August 31, upon entering Glacier Bay through the mouth, the operator of a private motor vessel must report directly to the Bartlett Cove Ranger Station for orientation.

(1) Failing to report as required is prohibited.

(2) The superintendent may waive this requirement before or upon entry.

(ii) *Commercial vessel permits and conditions*. Each commercially operated motor vessel must have the required permit(s) to enter Glacier Bay.

(A) To obtain or renew an entry permit, a cruise ship company must submit and, after approval, implement a pollution minimization plan. The plan must ensure, to the fullest extent possible, that any ship permitted to travel within Glacier Bay will apply the industry's best approaches toward vessel oil-spill response planning and prevention and minimization of air and underwater noise pollution while operating in Glacier Bay. The superintendent will approve or disapprove the plan.

(B) Each cruise ship company must assess the impacts of its activities on Glacier Bay resources pursuant to the NPS research, inventory and monitoring plan as specified in the applicable concession permit.

(C) The superintendent at any time may impose operating conditions to prevent or mitigate air pollution, water pollution, underwater noise pollution or other effects of cruise ship operation.

(D) The superintendent will immediately suspend the entry permit(s) of any cruise ship that fails to submit, implement or comply with a pollution minimization plan or additional operating condition.

(E) A commercial vessel, except a commercial fishing vessel, is prohibited from entering Glacier Bay unless the operator notifies the Bartlett Cove Ranger Station of the vessel's entry immediately upon entry or within the 48 hours before entry.

(F) Off-boat activity from a commercial vessel is prohibited, unless the superintendent allows it under

conditions that the superintendent establishes.

(iii) *Exceptions from entry permit requirement*. A permit is not required to enter Glacier Bay when:

(A) A motor vessel is engaged in official business of the state or federal government.

(B) A private motor vessel based at Bartlett Cove is transiting between Bartlett Cove and waters outside Glacier Bay, or is operated in Bartlett Cove in waters bounded by the public and administrative docks.

(C) A motor vessel is singularly launched from a permitted motor vessel and operated only while the permitted motor vessel remains at anchor, or a motor vessel is launched and operated in accordance with a concession agreement from a permitted motor vessel while that vessel is not underway.

(D) A commercial fishing vessel otherwise permitted under all applicable authorities is actually engaged in commercial fishing within Glacier Bay.

(E) The superintendent grants a vessel safe harbor at Bartlett Cove.

(iv) *Prohibitions*. (A) Operating a motor vessel in Glacier Bay without a required permit is prohibited.

(B) Violating a term or condition of a permit or an operating condition or restriction issued or imposed pursuant to this chapter is prohibited.

(C) The superintendent may immediately suspend or revoke a permit or deny a future permit request as a result of a violation of a provision of this chapter.

(v) *Restrictions on vessel entry*. The superintendent will allow vessel entry in accordance with the following table:

Type of vessel	Allowable vessel use days per day	Total entries allowed	Total vessel use days allowed	Period covered by limitation
Cruise ship .....	2	( <sup>1</sup> )	( <sup>1</sup> )	Year round.
Tour vessel .....	3	.....	.....	Year round.
Charter vessel .....	6	312	552	June 1–Aug. 31.
Private vessel .....	25	468	1,971	June 1–Aug. 31.

<sup>1</sup> See paragraphs (b)(2)(v) (A) through (C) of this section.

(A) By October 1, 1996, the superintendent will reinstate consultation with the National Marine Fisheries Service (NMFS) and request a biological opinion under section 7 of the Endangered Species Act. The superintendent will request that NMFS

assess and analyze any effects of vessel traffic authorized by this section, on the endangered and threatened species that occur in or use Glacier Bay National Park and Preserve.

(1) Based on this biological opinion, applicable authority, and any other

relevant information, the director shall reduce the vessel entry and use levels for any or all categories of vessels in this section effective for the 1998 season or any year thereafter, if required to assure protection of the values and purposes of Glacier Bay National Park and Preserve.

(2) The director will publish a document in the Federal Register on any revision in the number of seasonal entries and use days under this paragraph (b)(2)(v), with an opportunity for public comment.

(B) By October 1, 1997, the superintendent will determine, with the director's approval, whether studies have been completed and sufficient scientific and other information has been developed to support an increase in cruise ship entries for the 1998 summer season (June 1 through August 31) while assuring protection of the values and purposes of Glacier Bay National Park and Preserve. Any increase will be subject to the maximum daily limit of two vessel use-days. If the superintendent recommends an increase, the superintendent will publish a document of the increase in the Federal Register with an opportunity for public comments.

(C) By October 1 of each year (beginning in 1998), the superintendent will determine, with the director's approval, the number of cruise ship entries for the following summer season (June 1 through August 31). This determination will be based upon available scientific and other information and applicable authorities. The number will be subject to the maximum daily limit of two vessel use-days. The superintendent will publish a document of any revision in seasonal entries in the Federal Register with an opportunity for public comment.

(D) Nothing in this paragraph will be construed to prevent the superintendent from taking any action at any time to assure protection of the values and purposes of Glacier Bay National Park and Preserve.

(3) *Operating restrictions.* (i) Operating a vessel within one-quarter nautical mile of a whale is prohibited, except for a commercial fishing vessel actually trolling or setting or pulling long lines or crab pots as otherwise authorized by the superintendent.

(ii) The operator of a vessel accidentally positioned within one-quarter nautical mile of a whale shall immediately slow the vessel to ten knots or less, without shifting into reverse unless impact is likely. The operator shall then direct or maintain the vessel on as steady a course as possible away from the whale until at least one-quarter nautical mile of separation is established. Failure to take such action is prohibited.

(iii) Pursuing or attempting to pursue a whale is prohibited.

(iv) *Whale water restrictions.* (A) May 15 through August 31, the following

Glacier Bay waters are designated as whale waters.

(1) Lower bay waters, defined as waters north of an imaginary line drawn from Point Carolus to Point Gustavus; and south of an imaginary line drawn from the northernmost point of Lars Island across the northernmost point of Strawberry Island to the point where it intersects the line that defines the Beardslee Island group, as described in paragraph (b)(3)(vii)(A)(4) of this section, and following that line south and west to the Bartlett Cove shore.

(2) [Reserved]

(B) June 1 through August 31, the following Glacier Bay waters are designated as whale waters.

(1) Whidbey Passage waters, defined as waters north of an imaginary line drawn from the northernmost point of Lars Island to the northernmost point of Strawberry Island; west of imaginary lines drawn from the northernmost point of Strawberry Island to the southernmost point of Willoughby Island, the northernmost point of Willoughby Island (proper) to the southernmost point of Francis Island, the northernmost point of Francis Island to the southernmost point of Drake Island; and south of the northernmost point of Drake Island to the northernmost point of the Marble Mountain peninsula.

(2) East Arm Entrance waters, defined as waters north of an imaginary line drawn from the southernmost point of Sebree Island to the northernmost point of Sturgess Island, and from there to the westernmost point of the unnamed island south of Puffin Island (that comprises the south shore of North Sandy Cove); and south of an imaginary line drawn from Caroline Point across the northernmost point of Garforth Island to shore.

(3) Russell Island Passage waters, defined as waters enclosed by imaginary lines drawn from: the easternmost point of Russell Island due east to shore, and from the westernmost point of Russell Island due north to shore.

(C) The superintendent may designate temporary whale waters and impose motor vessel speed restrictions in whale waters. Maps of temporary whale waters and notice of vessel speed restrictions imposed pursuant to this paragraph (b)(3)(iv)(C) shall be made available to the public at park offices at Bartlett Cove and Juneau, Alaska, and shall be submitted to the U.S. Coast Guard for publication as a "Notice to Mariners."

(D) Violation of a whale water restriction is prohibited. The following restrictions apply in designated whale waters:

(1) Except on vessels actually fishing as otherwise authorized the superintendent or vessels operating solely under sail, while in transit, operators of motor vessels over 18 feet in length will in all cases where the width of the water permits, maintain a distance of at least one nautical mile from shore, and, in narrower areas will navigate in mid-channel: *Provided, however,* that unless other restrictions apply, operators may perpendicularly approach or land on shore (*i.e.*, by the most direct line to shore) through designated whale waters.

(2) Motor vessel speed limits established by the superintendent pursuant to paragraph (b)(3)(iv)(C) of this section.

(v) *Speed restrictions.* (A) May 15 through August 31, in the waters of the lower bay as defined in paragraph (b)(3)(iv)(A)(1) of this section, the following are prohibited:

(1) Operating a motor vessel at more than 20 knots speed through the water; or

(2) Operating a motor vessel at more than 10 knots speed through the water, when the superintendent has designated a maximum speed of 10 knots (due to the presence of whales).

(B) July 1 through August 31, operating a motor vessel on Johns Hopkins Inlet south of 58°54.2'N. latitude (an imaginary line running approximately due west from Jaw Point) at more than 10 knots speed through the water is prohibited.

(vi) *Closed waters, islands and other areas.* The following are prohibited:

(A) Operating a vessel or otherwise approaching within 100 yards of South Marble Island; or Flapjack Island; or any of the three small unnamed islets approximately one nautical mile southeast of Flapjack Island; or Eider Island; or Boulder Island; or Geikie Rock; or Lone Island; or the northern three-fourths of Leland Island (north of 58°39.1'N. latitude; or any of the four small unnamed islands located approximately one nautical mile north (one island), and 1.5 nautical miles east (three islands) of the easternmost point of Russell Island; or Graves Rocks (on the outer coast); or Cormorant Rock, or any adjacent rock, including all of the near-shore rocks located along the outer coast, for a distance of 1½ nautical miles, southeast from the mouth of Lituya Bay; or the surf line along the outer coast, for a distance of 1½ nautical miles northwest of the mouth of the glacial river at Cape Fairweather.

(B) Operating a vessel or otherwise approaching within 100 yards of a Steller (northern) sea lion (*Eumetopias jubatus*) hauled-out on land or a rock or

a nesting seabird colony: *Provided, however,* that vessels may approach within 50 yards of that part of South Marble Island lying south of 58°38.6'N. latitude (approximately the southern one-half of South Marble Island) to view seabirds.

(C) May 1 through August 31, operating a vessel, or otherwise approaching within ¼ nautical mile of, Spider Island or any of the four small islets lying immediately west of Spider Island.

(D) May 1 through August 31, operating a cruise ship on Johns Hopkins Inlet waters south of 58°54.2'N. latitude (an imaginary line running approximately due west from Jaw Point).

(E) May 1 through June 30, operating a vessel or a seaplane on Johns Hopkins Inlet waters south of 58°54.2'N. latitude (an imaginary line running approximately due west from Jaw Point).

(F) July 1 through August 31, operating a vessel or a seaplane on Johns Hopkins Inlet waters south of 58°54.2'N. latitude (an imaginary line running approximately due west from Jaw Point), within ¼ nautical mile of a seal hauled out on ice; except when safe navigation requires, and then with due care to maintain the ¼ nautical mile distance from concentrations of seals.

(G) Restrictions imposed in this paragraph (b)(3)(vi) are minimum distances. Park visitors are advised that protection of park wildlife may require that visitors maintain greater distances from wildlife. *See*, 36 CFR 2.2 (Wildlife protection).

(vii) *Closed waters, motor vessels and seaplanes.* (A) May 1 through September 15, operating a motor vessel or a seaplane on the following water is prohibited:

(1) Adams Inlet, east of 135°59.2'W. longitude (an imaginary line running approximately due north and south through the charted (5) obstruction located approximately 2¼ nautical miles east of Pt. George).

(2) Rendu Inlet, north of the wilderness boundary at the mouth of the inlet.

(3) Hugh Miller complex, including Scidmore Bay and Charpentier Inlet, west of the wilderness boundary at the mouth of the Hugh Miller Inlet.

(4) Waters within the Beardslee Island group (except the Beardslee Entrance), that is defined by an imaginary line running due west from shore to the easternmost point of Lester Island, then along the south shore of Lester Island to its western end, then to the southernmost point of Young Island, then north along the west shore and east

along the north shore of Young Island to its northernmost point, then at a bearing of 15° true to an imaginary point located one nautical mile due east of the easternmost point of Strawberry Island, then at a bearing of 345° true to the northernmost point of Flapjack Island, then at a bearing of 81° true to the northernmost point of the unnamed island immediately to the east of Flapjack Island, then southeasterly to the northernmost point of the next unnamed island, then southeasterly along the (Beartrack Cove) shore of that island to its easternmost point, then due east to shore.

(B) June 1 through July 15, operating a motor vessel or a seaplane on the waters of Muir Inlet north of 59°02.7'N. latitude (an imaginary line running approximately due west from the point of land on the east shore approximately 1 nautical mile north of the McBride Glacier) is prohibited.

(C) July 16 through August 31, operating a motor vessel or a seaplane on the waters of Wachusett Inlet west of 136°12.0'W longitude (an imaginary line running approximately due north from the point of land on the south shore of Wachusett Inlet approximately 2¼ nautical miles west of Rowlee Point) is prohibited.

(viii) *Noise restrictions.* June 1 through August 31, except on vessels in transit or as otherwise permitted by the superintendent, the use of generators or other non-propulsive motors (except a windless) is prohibited from 10:00 p.m. until 6:00 a.m. in Reid Inlet, Blue Mouse Cove and North Sandy Cove.

(ix) *Other restrictions.* Notwithstanding any other provision of this part, due to the rapidly emerging and changing ecosystems of, and for the protection of wildlife in Glacier Bay National Park and Preserve, including but not limited to whales, seals, sea lions, nesting birds and molting waterfowl:

(A) Pursuant to §§ 1.5 and 1.6 of this chapter, the superintendent may establish, designate, implement and enforce restrictions and public use limits and terminate such restrictions and public use limits.

(B) The public shall be notified of restrictions or public use limits imposed under this paragraph (b)(3)(ix) and the termination or relaxation of such, in accordance with § 1.7 of this chapter, and by submission to the U.S. Coast Guard for publication as a "Notice to Mariners," where appropriate.

(C) The superintendent shall make rules for the safe and equitable use of Bartlett Cove waters and for park docks. The public shall be notified of these rules by the posting of a sign or a copy

of the rules at the dock. Failure to obey a sign or posted rule is prohibited.

(x) Closed waters and islands within Glacier Bay as described in paragraphs (b)(3) (iv) through (vii) of this section are described as depicted on NOAA Chart #17318 GLACIER BAY (4th Ed., Mar. 6/93) available to the public at park offices at Bartlett Cove and Juneau, Alaska.

(xi) Paragraphs (b)(3) (i) through (iii) of this section do not apply to a vessel being used in connection with federally permitted whale research or monitoring; other closures and restrictions in this paragraph (b)(3) do not apply to authorized persons conducting emergency or law enforcement operations, research or resource management, park administration/supply, or other necessary patrols.

(4) *Marine vessel visible emission standards.* Visible emissions from a marine vessel, excluding condensed water vapor, may not result in a reduction of visibility through the exhaust effluent of greater than 20 percent for a period or periods aggregating more than:

(i) Three minutes in any one hour while underway, at berth, or at anchor; or

(ii) Six minutes in any one hour during initial startup of diesel-driven vessels; or

(iii) 12 minutes in one hour while anchoring, berthing, getting underway or maneuvering in Bartlett Cove.

\* \* \* \* \*

Dated: April 22, 1996.

George T. Frampton, Jr.,  
Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96-13210 Filed 5-29-96; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[ID-1-1-5528a; FRL-5449-2]

**Approval and Promulgation of State Implementation Plans: Idaho**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) approves the State Implementation Plan submitted by the State of Idaho for the purpose of bringing about the attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal