

## 6. Editorial revisions.

In all of the sections cited above, Montana proposes numerous editorial revisions.

**III. Public Comment Procedures**

In accordance with the provisions of 30 CFR 732.17(h), 884.14, and 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15 and 884.14. If the amendment is deemed adequate, it will become part of the Montana program and Montana plan.

**1. Written Comments**

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

**2. Public Hearing**

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., mdt, on June 20, 1995. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

**3. Public Meeting**

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing

to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made part of the administrative record.

**IV. Procedural Determinations****1. Executive Order 12866**

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning Review).

**2. Executive Order 12778**

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met. Decisions on proposed State abandoned mine land reclamation plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231-1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

**3. National Environmental Policy Act**

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). Also, agency decisions on proposed State abandoned mine land reclamation plans and revisions thereof are categorically

excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

**4. Paperwork Reduction Act**

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

**5. Regulatory Flexibility Act**

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

**List of Subjects in 30 CFR Part 926**

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 30, 1995.

**Richard J. Seibel,**

*Regional Director, Western Regional Coordinating Center.*

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**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:** Proposed rule.

**SUMMARY:** The National Park Service (NPS) has reevaluated the current vessel regulations for Glacier Bay National Park and Preserve and is proposing to revise the regulations, including vessel quotas, that were established to protect the endangered humpback whale and other resources Glacier Bay National Park and Preserve manages. These regulations are being proposed after an

Endangered Species Act, Section 7, consultation with the National Marine Fisheries Service (NMFS), and are consistent with the 1993 Biological Opinion issued by that agency. The regulations are drafted to track the proposed action (Alternative Five) from the six-alternative Vessel Management Plan and Environmental Assessment prepared by the NPS. The proposed regulations contemplate an increase in cruise ship use, to be offset by specific mitigation measures. The regulations would authorize a 72 percent seasonal increase in cruise ship traffic during the months of June, July, and August. However, there would be no increase in the maximum number of cruise ships permitted to use the bay on any given day (two). Rather, the increased traffic will be absorbed, for the most part, by authorizing more cruise ship entries in early and late summer. The NPS also solicits comment on the possibility of modest increases in seasonal use by charter and private vessels. The proposed regulations would also extend and codify park compendium vessel regulations that were developed, under the authority of the existing regulations, for the protection of humpback whales, Steller sea lions, and other wildlife and resource values within the park. Additional measures are also proposed to mitigate natural resource impacts associated with the proposed increase in vessel traffic. Finally, to provide park visitors a range of recreational opportunities and to maintain opportunities for the safe use of kayaks, the proposed regulations would close the upper Muir Inlet to motor vessels on a seasonal basis.

**DATES:** Written comments, suggestions, or objections will be accepted until August 4, 1995. Hearing dates and locations are listed under

**SUPPLEMENTARY INFORMATION**, below.

**ADDRESSES:** Comments should be addressed to: Superintendent, Proposed Regulations Comment, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826.

**FOR FURTHER INFORMATION CONTACT:** J.M. Brady, Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826, Telephone: (907) 697-2230.

**SUPPLEMENTARY INFORMATION:**

#### Public Hearings

Open houses and hearings are scheduled for the following dates and locations:

June 19—Gustavus, School Gym, Open House (6:30 to 8 p.m.) & Hearing (8 p.m.)

June 20—Juneau, Centennial Hall, Open house (2 to 4 p.m.) & Hearing (8 p.m.)

June 21—Hoonah, Open house (6:30 to 8 p.m.) & Hearing (8 p.m.)

June 22—Elfin Cove, Community Bld., Open House (6:30 to 8 p.m.) & Hearing (8 p.m.)

June 23—Pelican, Community Hall, Open House (6:30 to 8 p.m.) & Hearing (8 p.m.)

July 11—Anchorage, NPS Regional Office, 2525 Gambell St., Hearing (7 p.m.)

#### Background

Glacier Bay National Monument was established by presidential proclamation dated February 26, 1925 (43 Stat. 1988). The monument was established to protect the dynamically changing glacial environment of mountains, tidewater glaciers, associated movements and development of flora and fauna, and to promote the scientific study of such. The early monument included marine waters within Glacier Bay north of a line running approximately from Geikie Inlet on the west side of the bay to the northern extent of the Beardslee Islands on the east side of the bay. The monument was expanded by a second presidential proclamation on April 18, 1939. 53 Stat. 2534. The expanded monument included additional lands and the marine waters of all of Glacier Bay; portions of Cross Sound, North Inian Pass, North Passage, Icy Passage, and Excursion Inlet; and Pacific coastal waters to a distance of three miles seaward between Cape Spencer in the south and Sea Otter Creek, north of Cape Fairweather. The inclusion of marine waters within the boundaries of the monument and present-day park presents unique opportunities for the study and preservation of marine flora and fauna in an unimpaired state.

Glacier Bay National Monument was redesignated as Glacier Bay National Park in 1980 by the Alaska National Interest Lands Conservation Act (ANILCA). The new park included all lands and waters of the previously existing monument, plus additional land areas. 94 Stat. 2382. The legislative history of ANILCA provides that certain NPS units in Alaska including Glacier Bay National Park “\* \* \* are intended to be large sanctuaries where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause.” Sen. Rep. No. 96-413, 96th Cong., 1st Sess. 137 (1979); and, Cong. Rec. H 10532 (Nov. 12, 1980).

The original monument proclamations and the NPS Organic Act and its amendments governed the management of the former Glacier Bay National Monument and govern the present Glacier Bay National Park and Preserve. The NPS Organic Act of 1916 directs the Secretary of the Interior and the NPS to manage national parks and monuments to “conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” 16 U.S.C. § 1. In addition, the Redwood National Park Act of 1978 states: “The authorization of activities shall be construed and the protection, management and administration of [NPS areas] shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress.” 92 Stat. 166, 16 U.S.C. § 1a-1. The NPS Organic Act also grants the Secretary of the Interior the authority to implement “rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and reservations under the jurisdiction of the National Park Service.” 16 U.S.C. 3. In addition to general regulatory authority, the NPS has been delegated specific authority to “[p]romulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System, including waters subject to the jurisdiction of the United States \* \* \*.” 16 U.S.C. § 1a-2(h).

#### Vessel Management

The NPS first published vessel traffic regulations for Glacier Bay, a marine body of water in Glacier Bay National Park, in 1980. Those regulations, that were published in two parts, were promulgated in response to a NMFS Biological Opinion issued pursuant to Section 7 of the Endangered Species Act. The NPS requested a formal consultation with NMFS in 1979, when for the second consecutive year, the number of endangered humpback whales that used the bay for summer feeding remained significantly below historical levels. NMFS concluded that the increase in vessel traffic, especially erratically traveling craft, may have altered the humpback's behavior and that restriction and regulation of vessel traffic were necessary to protect the humpback whales.

One portion of the ensuing regulations limited the number of cruise ships that entered Glacier Bay to two per day and not more than a total of 89 cruise ship entries during the months when whales feed in the bay (June 1 through August 31). The regulations also imposed speed and routing restrictions on all motor vessels and restricted vessels from remaining closer than one-quarter nautical mile from a whale, or otherwise pursuing or attempting to pursue a whale. 45 FR 32228 (May 15, 1980).

The second portion of regulations limited small vessel entries into Glacier Bay to 1976 levels for charter vessels and allocated 339 entries for private vessels from June 1 through August 31. 45 FR 32234 (May 15, 1980); 45 FR 85471 (December 30, 1980); and 46 FR 50370 (October 13, 1981).

The NPS intended the two sets of regulations to be temporary, until more conclusive research could be completed and NMFS could again be consulted. Pending completion of this process, the NPS extended the regulations until August 31, 1983. 48 FR 21947 (May 16, 1983).

On June 22, 1983, NMFS issued its second Biological Opinion. The NMFS reported that while the amount of vessel use that would have the effect of total whale displacement from Glacier Bay could not be defined or predicted, the operational and vessel number restrictions imposed by the NPS were sufficient so that some increase in the amount of vessel use could occur without jeopardizing the continued existence of the southeast Alaska humpback whale stock. However, NMFS directed that no additional vessel traffic should be allowed unless the number of individual whales that enter Glacier Bay remained equal to or greater than the 1982 level of 22 whales—and that any increase of vessel traffic be implemented in a conservative manner and appropriately monitored. The NMFS suggested that no more than a 20 percent increase in the three vessel categories at that time (large, small and charter vessels) would be prudent and that a minimum of two years should be allowed for monitoring and evaluating the effects of such an increase before proposing additional increases. Lastly, NMFS cautioned the NPS that it was unable to determine the amount of additional vessel traffic in Glacier Bay to which the whales could adjust.

On April 18, 1984, based on the 1983 NMFS opinion, the NPS published proposed rules for the protection of humpback whales in Glacier Bay (49 FR 15482); final rules were published on May 10, 1985 (50 FR 19880). These

regulations continued the permit requirement and seasonal vessel limits for entry into Glacier Bay and continued the speed and routing restrictions on motor vessels, as well as the restrictions on remaining close to, or otherwise pursuing or attempting to pursue a whale. The terms “entry” and “vessel use-day” were defined and applied to prevent vessel accumulation and overcrowding. Earlier vessel categories were dropped in favor of the current categories: cruise ship, tour vessel, charter vessel, and private vessel. Vessel entry limits were retained for cruise ships and private vessels; charter vessels and the newly defined tour boat class were assigned seasonal quotas. Drawing on the NMFS 1983 Biological Opinion, the regulations provided authority for the superintendent to permit an increase in vessel traffic up to 20 percent above the 1976 base figures. The amount of whale research then underway and anticipated in the future was published with the proposed and final rules.

In 1985, the NPS authorized a 15 percent increase in cruise ship traffic and a 20 percent increase in charter vessel and private vessel entries. An additional 5 percent increase in cruise ship traffic was authorized in 1988.

In 1991, the NMFS published the Final Recovery Plan for the Humpback Whale. The interim goal of the plan is to double the extant population of humpback whales within the next 20 years by “\* \* \* optimiz[ing] natural fecundity by providing natural feeding opportunities, and reducing death and injury by human activities.” Objectives in the plan include: (1) improvement of current and historical habitat by reducing human-produced underwater noise when whales are present, (2) prevention of collisions between whales and ships, and (3) the continued monitoring of humpback whale populations.

#### **The 1995 Vessel Management Plan**

In response to requests from the cruise ship industry and other tourism groups for greater access to Glacier Bay—which is a major tourist destination—the NPS undertook a review of the vessel quotas for Glacier Bay that were established in 1985. The existing quotas were based on the NMFS 10-year-old Biological Opinion. In order to obtain an updated opinion, the NPS prepared an Internal Review Draft Vessel Management Plan/Environmental Assessment (IRDVMP/EA). In September 1992, the NPS reintiated consultation with the NMFS. The IRDVMP/EA evaluated four alternatives for managing vessel traffic in Glacier

Bay. The NMFS review covered any vessel management alternative that is equivalent to, or less than, the range of vessel traffic increase described in the plan. NMFS Biological Opinion, February 19, 1993 (NPS VMP/EA Appendix D, p. 3). Two more alternatives that are within the scope of the Biological Opinion that NMFS subsequently issued have since been added to the plan. The four alternatives reviewed by NMFS ranged from an average 17 percent reduction in all vessel traffic—to an apportioned increase in cruise ship (72 percent), charter boat (8 percent), and private vessel traffic (34 percent). The NMFS reviewed the IRDDVMP/EA and analyzed the potential impacts of the plan on endangered humpback and gray whales and the threatened Steller sea lion.

Following review, the NMFS issued a Biological Opinion on February 19, 1993. The NMFS reported a nonjeopardy finding for the gray whale: as gray whales rarely enter Glacier Bay, the NMFS does not believe there will be any adverse impact on the gray whale as a result of the plan. (On June 16, 1994, the NMFS published a determination to remove the eastern North Pacific gray whale population from the list of endangered wildlife and plants (59 FR 31094)). The NMFS also concluded that the plan would not adversely affect the Steller sea lion population. All action alternatives proposed in the plan recommend that the existing summer closure surrounding the South Marble Island sea lion haul-out (100 yards) be extended to include this and other other haul-outs year-round.

In addressing humpback whales, the NMFS opinion recognized that the humpback whales that frequent southeastern Alaska (including those that visit Glacier Bay) are presumably part of a discrete North Pacific population. Therefore, the NMFS considered whether the effects of the plan were likely to jeopardize the continued existence of the entire North Pacific humpback population. The NMFS concluded that, for the three-year period following implementation, it would not. Beyond this short-term prediction, NMFS did not project long-term effects. NMFS did, however, make the following observations concerning the decline in humpback whale use of Glacier Bay, an issue of concern to NPS because of its duty to manage Glacier Bay in a manner that protects the opportunity for whales to enter and feed in the park's waters:

The NPS Vessel Management Plan and environmental assessment document a

declining trend in whale usage of Park waters and a decline in crude birth rate since 1988. However, given the small sample sizes involved, and the high inherent variability of these types of data, it is hard to assess whether or not these trends are real. If the trends are real, there is no way to determine whether they are caused by changes in prey distribution or increases in vessel traffic because there have not been conclusive prey studies or vessel interaction studies. However, because these changes have occurred coincidentally with increases in vessel traffic, NMFS cannot rule out the hypothesis that some humpback whales may avoid the area due to vessel traffic.

NMFS Biological Opinion, February 19, 1993 (NPS VMP/EA Appendix D, p. 13).

To mitigate these concerns, the NMFS urged the NPS "to take a conservative approach in all management actions that may affect humpback whales." *Id.* at 14. NMFS limited the validity of its opinion, as follows:

[B]ecause NMFS is concerned about significantly declining use of Park waters by humpback whales and a decline in the crude birth rate for humpback whales in Glacier Bay National Park and Icy Strait since 1988, this opinion is valid only until December 31, 1997.

NMFS Biological Opinion, February 1993 letter of transmittal (NPS VMP/EA, Appendix D, p. 2). NMFS directed that formal consultation must be reinitiated upon the expiration of the opinion. The NMFS also made two specific recommendations that have been included in all of the action alternatives of the NPS 1995 Vessel Management Plan:

(1) The NPS should implement a humpback whale feeding ecology research program which will provide information on movement, distribution, and abundance of humpback whales in Glacier Bay and northern southeast Alaska at least as far south as Sumner Strait. These data should be correlated to distribution of whale prey in space and time. Studies should also be conducted to determine how vessel presence alters the behavior and/or distribution of humpback whales.

(2) The NPS should continue monitoring programs that identify the number of humpback whales that feed in the National Park waters, and their individual identity, age, reproductive status, and length of stays. Although this information by itself will not provide an answer to the hypothesis that vessels affect humpback whales, it does provide indications of trends and deviations in humpback whale use in and around Glacier Bay.

NMFS Biological Opinion, February 19, 1993 (NPS VMP/EA Appendix D, p. 14).

### The Proposed Action

The proposed regulations are drafted to track the proposed action (Alternative

Five) from the six-alternative Vessel Management Plan and Environmental Assessment prepared by the NPS. The proposed regulations contemplate an increase in cruise ship use, to be offset by specific mitigation measures. The regulations would authorize a 72 percent seasonal increase in cruise ship traffic during the months of June, July, and August. However, there would be no increase in the maximum number of cruise ships permitted to use the bay on any given day (two). Rather, the increased traffic will be absorbed, for the most part, by authorizing more cruise ship entries in early and late summer. The basis for this proposal is the proposition that, with adequate mitigating measures, the number of seasonal entries allocated to cruise ships can be increased to equal the maximum daily use limit of two. The proposed regulations would also extend and codify park compendium vessel regulations that were developed, under the authority of the existing regulations, for the protection of humpback whales, Steller sea lions, and other wildlife and resource values within the park.

Although the proposed regulations do not propose an increase in charter vessels or private vessels, the NPS is interested in soliciting comment on the possibility of an 8% increase in charter vessel use and a 15% increase in private vessel use of Glacier Bay waters from June 1 through August 31, as described in Alternative Six in the VMP/EA. As in the case of cruise ships, this option would not allow an increase in the present maximum number of daily entries for charter vessels and private vessels (currently 6 and 25, respectively). Rather, it would allow these increases by authorizing more entries and use-days in early and late summer in each category:

For charter vessels: Seasonal entries and use-days would increase 8% from the present cap of 511 use-days to a new cap of 552 use days.

For private vessels: Seasonal entries and use-days would increase 15% from the present cap of 1,714 use-days to a new cap of 1,971 use days.

This option could provide more opportunities for a greater variety of visitors to Glacier Bay, including local park neighbors. However, the increase in vessel traffic from this option could result in greater impacts to park resources, particularly in light of the maneuverability of these smaller vessels and the challenge of achieving compliance with protective regulations. Consequently, NPS is considering this option, perhaps on a trial basis, contingent upon mitigation measures such as an educational orientation

program for small vessel operators, a compliance monitoring program, continued research on potential impacts to park resources, and—fundamental to all these measures—adequate resources for implementation. We encourage commenters to submit views on this option, that may be incorporated into the final regulation.

For general mitigation purposes, the proposed regulations would require charter and private vessel operators to attend a short educational program provided by NPS each season when they enter Glacier Bay. The program would inform boaters of closures, restrictions and other resource protection measures, as well as provide additional information to assist boaters in having a safe and enjoyable visit to the park. The NPS will also vigilantly monitor vessel use and enforce resource protection regulations.

Alternative Five proposes several additional mitigating measures. The NPS proposes to adopt the existing state standards for marine vessel (stack) emissions within Glacier Bay as NPS regulations.

This would permit the NPS to cooperatively monitor and enforce these standards. The NPS has received complaints from park visitors concerning stack emissions from cruise ships. While underway, cruise ships sometimes emit a blue-grey or black smoke plume as they travel the length of the Bay. As cruise ships increase the speed of their engines to head down-bay after their passengers have viewed Margerie Glacier, stack emissions sometimes increase and stagnate in the generally still air of the upper inlet, despoiling the spectacular and pristine view of the tidewater glaciers. Temperature inversions occur frequently at this location, holding plumes low and pancake-like over the inlet for hours. By adopting this regulation, the NPS can more effectively and consistently enforce the emission standards. This will ensure that all park visitors, including those visitors arriving each day on the second cruise ship, have an opportunity to view and photograph the tidewater glaciers in an unimpaired state.

Underwater noise pollution from cruise ship operation is also a park resource concern. The mechanical noise transmitted into the water by moving vessels has been identified as one of the most likely human-caused disturbances to whales. NMFS Biological Opinion, February 19, 1993 (NPS VMP/EA Appendix D, pp. 10–12).

Given the above concerns about air pollution and underwater noise pollution, NPS is proposing that cruise

ship companies seeking entry permits for operation in Glacier Bay prepare and, after approval, implement a pollution minimization plan. The purpose of this plan would be to assure, to the fullest extent possible, that cruise ships permitted to travel within Glacier Bay National Park apply the industry's best approaches toward minimization of air and underwater noise pollution. These approaches may include, for example, installation of original or retrofitted technology, use of cleaner fuels, and improved methods of operation. NPS specifically seeks comment on the merits of this pollution minimization proposal, and welcomes the input of industry and other knowledgeable parties on current pollution control measures across the cruise ship industry, research and development concerning improvements in pollution control measures, as well as the feasibility of various pollution minimization approaches. NPS intends to evaluate all this information in determining how to achieve air and noise pollution control and protection of park resources in the Bay.

In a similar vein, for entry permits subject to competitive allocation, NPS will give a strongly weighted preference to commercial vessels that can demonstrate minimization of air and underwater noise pollution. In this way, companies will be challenged to devise their own effective, state-of-the-art solutions.

The above measures to achieve cleaner, quieter cruise ship operations in Glacier Bay would provide important mitigation toward the protection of air quality and whale habitat in Glacier Bay. In addition, cruise ship permits would require permittees to assess the short and long-term impacts of their activities on potentially affected Glacier Bay resources through a research and monitoring program.

Since whales have been known to arrive at the mouth of Glacier Bay in May, the speed limit and the requirement that vessels in transit stay one nautical mile off-shore would automatically become effective in the designated lower bay whale waters each year on May 15. This earlier date would ensure that whales arriving at the mouth of Glacier Bay in late spring are able to pass through the narrow entrance to Glacier Bay to access the feeding areas with minimal disturbance. Previously the "mid-channel restriction" began on June 1, and the speed restriction was not activated until several whales were observed near the mouth of the bay.

Other natural resource protection measures that are proposed in this rulemaking serve to protect Steller sea

lions and their haul-outs; pupping and molting harbor seals; nesting sea bird colonies; and, nesting and molting water fowl and water fowl feeding areas. The specific locations and wildlife affected by these measures, and the activities taking place that are critical to each species that these measures seek to protect, are set out below in the section-by-section analysis.

During the last 10 years Glacier Bay has experienced increased use by visitors exploring the bay by kayak. Currently, kayaks and motor vessels concentrate in the bay's west arm, primarily because the west arm contains easily accessible, large, renowned tidewater glaciers. Conversely, kayakers (and other backcountry users), preferring a more remote, undisturbed recreational experience focus their activities in the less-used east arm (Muir Inlet). Given this, the NPS believes that even a modest increase in motor vessel traffic in the upper reaches of the Muir Inlet would substantially reduce opportunities for remote recreational experiences. Specifically, the proposed east arm closure would allow kayakers access to a tidewater glacier with no motor vessel disturbance. The closure would also mitigate a safety concern: kayakers are susceptible to being overturned by large vessel wakes. This concern is amplified in the narrow confines and steep sides of the upper east arm (Muir Inlet). The NPS believes that it is appropriate to provide a range of visitor opportunities (from motorized to non-motorized), take steps to protect the safety of kayakers, and maintain opportunities for use of this watercraft in Glacier Bay. Accordingly, based on detriment to the recreational resource values associated with kayaking and other backcountry use as well as safety concerns, the NPS is proposing to close the waters of the Muir Inlet north of Point McLeod (including Wachusett Inlet) to motor vessels June 1 through August 31.

#### Section-by-Section Analysis

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

The terms "cruise ship," "charter vessel" and "tour vessel" have been revised. 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 is proposing that a vessel with an International Tonnage Certificate at or over 2,000 tons gross (that carries passengers for hire) would be defined as a cruise ship. A vessel with an International Tonnage Certificate less than 2,000 tons gross (that carries passengers for hire) would be defined as a tour vessel or a charter vessel. The existing standard of 100 tons gross, based on the U.S. method for measuring vessels, will be retained. The NPS recognizes that there is not an exact means of conversion between these two systems and will honor either rating in support of a concessions authorization and entry permit. The NPS welcomes comments from knowledgeable parties concerning this proposal.

The terms "operate" and "operating" have been expanded to include the actual or constructive possession of a vessel. This has been done to enable enforcement action against vessels violating permit or closed-water restrictions when the vessel is not underway at the time of the violation. Definitions are proposed 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." Whale water speed limits have been measured and enforced 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 term "transit" has been defined to allow vessels to approach perpendicularly and land on an otherwise unrestricted shore within designated whale waters in order to view or photograph wildlife, camp, or participate in any other park activity. The term "whale season" has been deleted and the dates on which closures or restrictions begin and end are included as part of the regulation.

Section 13.65(b)(2) of the proposed regulations authorizes a 72 percent increase in cruise ship traffic over the seasonal limits authorized and implemented under the existing

regulations. However, there would be no increase in the maximum number of cruise ships permitted to use the bay on any given day (two). Rather, the increase in traffic will be absorbed, for the most part, by authorizing more cruise ship entries in early and late summer. This section also provides for reinitiation of consultation with NMFS to ensure that the increase in vessel traffic does not affect endangered or threatened species, particularly in Glacier Bay. The section also requires the Director of the NPS to reduce vessel entry and use levels in 1998 (or thereafter) if necessary to protect the values and purposes of Glacier Bay National Park and Preserve.

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)(ii)(A) requires concessioner vessels to notify the Bartlett Cove Ranger Station within the 24 hours prior to, or immediately upon, entry to the bay. Paragraph (b)(2)(iii)(A) 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)(v)(C) allows private vessels to launch a motorized skiff or tender after anchoring. Paragraphs (vii) and (viii) have been added to clarify the superintendent's authority to revoke or deny a permit based on violations of this section.

Section 13.65(b)(3) of the proposed 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. The superintendent's authority to designate temporary whale waters and establish vessel use and speed restrictions have also been retained. The proposed regulations also identify, and designate as whale waters, areas in which seasonal restrictions have applied on a recurring basis. The proposed regulations would codify the restrictions that were implemented pursuant to section 13.65(b)(2), *i.e.*, mid-channel transit through these waters, and in the case of lower bay waters, speeds not to exceed 10 knots (proposed regulation (b)(3)(v)(A)).

As whales have been known to arrive at the mouth of Glacier Bay in May, the speed limit and the requirement that vessels in transit stay one nautical mile off-shore, as proposed, would become effective in the designated lower bay whale waters each year on May 15. This earlier date would ensure 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 the feeding areas. The superintendent would continue to have discretion to increase the speed limit through these waters to 20 knots in the absence of whales.

A speed restriction is also proposed 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)–(E) are also proposed to protect the park's harbor seals, that have recently been recognized as the largest concentration of breeding harbor seals in the world. These closures and restrictions have previously been enforced as park compendium regulations. The preceding paragraph (b)(3)(vi)(B) is proposed for the year-round protection of Steller sea lions and their haul-outs and is consistent with NMFS recommendations.

Nesting sea bird colonies would be protected in proposed section 13.65(b)(3)(vi)(A), that closes colonial nesting islands to vessel landing and foot traffic year-round. These small-island closures were previously enforced, seasonally, as park compendium regulations. 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. This action will also augment sea lion haul-out protection at South Marble Island. Park visitors are advised in paragraph (b)(3)(vi)(F) that the distances proposed in this rulemaking that are 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 seems likely that wildlife may be disturbed or frightened.

Nesting sea birds as well as molting and feeding waterfowl would receive protection through the seasonal water (area) closures proposed for motor vessels in paragraphs (b)(3)(vii)(A)–(E). These motor vessel closures would also serve to protect harbor seal haul-outs associated with pupping and molting activities (paragraphs (C) and (D)). Similar closures were previously proposed 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, that these areas support, 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.

Paragraph (b)(3)(vii)(F) proposes closing the waters of the Muir Inlet north of Point McLeod (including Wachusett Inlet) to motor vessels on a seasonal basis. This closure is proposed to allow for kayaks to safely pass through the narrow and steep walls of the east arm to the tidewater glaciers there and to provide the opportunity for camping and other backcountry use away from the noise of motor vessel traffic.

As discussed above, the NPS believes that the closures proposed in paragraphs (b)(3)(vi) and (b)(3)(vii)(A)–(E) are necessary to protect the natural values of Glacier Bay, and the closures proposed in paragraph (b)(3)(vii)(F) are necessary to protect the visitor experience values of Glacier Bay. These closures are proposed in accordance with ANILCA Section 1110(a) to prevent detriment to the resource values of Glacier Bay. Therefore, in addition to the public comment period provided by this rulemaking, the NPS will hold hearings in the vicinity of Glacier Bay on these proposed closures, as noticed in this rulemaking.

In order to further limit and mitigate the effects of underwater noise, 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. The NPS has previously determined the need to provide administrative remedies to protect whales through imposition of temporary public-use limits, whale-water designations, and other temporary operating restrictions. *See*, 50 FR 19880, 19881–82 (May 10, 1985). The environmentally safe implementation and maintenance of the increased public-use levels proposed in this rulemaking require that the superintendent have the necessary authority to modify use levels and establish vessel restrictions to protect park resources. The proposed regulation incorporates the existing authority granted to the superintendent in 1985; recognizes that in addition to whales, other wildlife may be impacted by the increase in vessel traffic (*see*, NPS VMP/EA); and avoids duplication of existing authority and standards. In most cases, the action contemplated under this section would be the shifting of existing prohibitions, 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 13.65(b)(4) of the proposed regulations adopts the existing state restrictions on vessel (stack) emissions.

Section 13.65(b)(5)–(6) of the existing regulations, *Restricted Commercial Fishing Harvest*, has been addressed separately in proposed rules, 56 FR 37262 (August 5, 1991), and has not been considered as part of these proposed rules. However, the proposed seasonal closure of water areas to vessels (b)(3)(vi), and motor vessels (b)(3)(vii), would also apply to commercial fishing boats.

### Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulations to the address noted at the beginning of this rulemaking. Comments must be received on or before August 4, 1995. The NPS will review comments and consider making changes to the rule, based upon an analysis of comments.

### Drafting Information

The primary authors of this revision are Russel J. Wilson, Alaska Regional 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. Other National Park Service staff from the Alaska Regional Office and Glacier Bay National Park and Preserve made significant contributions.

### Compliance With Other Laws

This proposed 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.*).

The collection of information contained in this rule has been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.* The Office of Management and Budget approval number is 1024–0026.

### List of Subjects in 36 CFR Part 13

Alaska, National parks.

## PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

### Subpart C—Special Regulations—Specific Park Areas In Alaska

In consideration of the foregoing, 36 CFR Part 13 is proposed to be amended as follows:

1. The authority citation for part 13 continues 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), 1361, 1531.

2. Section 13.65(b) (1) through (4) is revised 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.

*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.”

*Transit* means to operate a motor vessel under power and continuously so as to accomplish ½ nautical mile of littoral (i.e. along the shore) travel.

*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, and conducts tours or provides transportation at regularly scheduled times along a regularly scheduled route.

*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. (i) The superintendent shall maintain a motor vessel permit system.

(ii) Permits for cruise ships, tour vessels, and charter vessels shall be issued in accordance with National Park Service concession authorizations. To obtain or renew an entry permit, a cruise ship company shall 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 minimization of air

and underwater noise pollution while operating in Glacier Bay. Such plan shall be submitted to the superintendent, who may approve or disapprove the plan. In addition, the superintendent may adopt at any time permit operating conditions for the purpose of mitigating air and underwater noise pollution or other impacts of cruise ship operation. The superintendent shall immediately suspend the entry permit(s) of any cruise ship that fails to submit, implement or abide by such a plan or operating condition.

(A) A concessioner vessel is prohibited from entering Glacier Bay unless the Bartlett Cove Ranger Station has been given notice of the vessel's entry within the 24 hours prior to, or immediately upon, entry.

(B) Off-boat activities from a concessioner vessel are prohibited, except as permitted and under conditions established by the superintendent.

(iii) Permits for private motor vessels are required to enter Glacier Bay June 1 through August 31. Private motor vessel permits shall be issued in accordance with, and subject to, conditions established by the superintendent. Conditions established for private motor vessels may include, but are not limited to, whom a vessel operator must contact when entering or leaving Glacier Bay, designated anchorages, and the maximum length of stay in Glacier Bay.

(A) June 1 through August 31, upon entering Glacier Bay through the mouth, the operator of a private motor vessel shall proceed directly to the Bartlett Cove Ranger Station for orientation. Failing to report as required is prohibited.

(1) The superintendent may waive this requirement prior to or upon entry.

(2) [Reserved]

(iv) The superintendent shall restrict vessel entry to, and operation within, Glacier Bay to no more than the following:

(A) Cruise ships are limited to two vessel use days per day;

(B) Tour vessels are limited to three vessel use days per day;

(C) Charter vessels are limited, June 1 through August 31, to six vessel use days per day, and a total of no more than 312 entries and 552 vessel use days;

(D) Private vessels are limited, June 1 through August 31, to 25 vessel use days per day, and a total of no more than 468 entries and 1,971 vessel use days;

(E) Provided that, no later than October 1, 1996, the superintendent shall reinstate consultation with the U.S. National Marine Fisheries Service

(NMFS) and request a Biological Opinion pursuant to section 7 of the Endangered Species Act. The superintendent shall request the NMFS assess and analyze any impacts, that may be associated with the vessel traffic authorized by this section (13.65), to the endangered and threatened species that occur in, or that use, Glacier Bay National Park and Preserve. 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 protect the values and purposes of Glacier Bay National Park and Preserve. The Director would accordingly publish a notice of such revision in the **Federal Register**. Nothing in this paragraph shall be construed to prevent the superintendent from taking any action at any time in order to protect the values and purposes of Glacier Bay National Park and Preserve.

(v) Operating a motor vessel in Glacier Bay without a permit issued pursuant to this section is prohibited, except:

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

(B) A private motor vessel based at Bartlett Cove that is transiting between Bartlett Cove and waters outside Glacier Bay, or that is being operated in Bartlett Cove in waters bounded by the Public and Administrative Docks.

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

(D) A commercial fishing vessel otherwise authorized and permitted, and actually engaged in commercial fishing within Glacier Bay.

(E) A vessel granted safe harbor at Bartlett Cove by the Superintendent.

(vi) Violating a term or condition of a permit issued pursuant to this section is prohibited.

(vii) Violating a term or condition of a permit issued pursuant to this section may also result in the suspension or revocation of the permit by the superintendent.

(viii) Operating a motor vessel in Glacier Bay without a permit shall constitute sufficient grounds for the superintendent to deny future permit requests.

(3) Operating Restrictions. (i) Except for a commercial fishing vessel actually

trolling or setting or pulling long lines or crab pots as authorized and permitted by the superintendent, operating a vessel within one-quarter nautical mile of a whale is prohibited.

(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.

(A) Failure to take action as required in paragraph (b)(3)(ii) is prohibited.

(B) [Reserved]

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

(1) Except vessels actually fishing as authorized and permitted by 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 operators may perpendicularly approach and land on an otherwise unrestricted shore within designated whale waters in order to view or photograph wildlife, camp, or participate in any other park activity.

(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 a speed greater than 10 knots speed through the water, or

(2) Operating a motor vessel at a speed greater than 20 knots speed through the water, when the superintendent has designated a maximum speed of 20 knots during the absence 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 a speed greater 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 feet of a nesting seabird colony; or that part of South Marble Island lying south of 58°38.6' N.

latitude (approximately the southern one-half of South Marble Island); or Flapjack Island; or 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 the four small unnamed islands located approximately one nautical mile north (one island), and 1.5 nautical miles east (three islands) of the eastern-most point of Russell Island.

(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 that part of South Marble Island lying north of 58°38.6' N. latitude (approximately the northern one-half of South Marble 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.

(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 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).

(E) 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.

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

(vii) Closed Waters, Motor Vessels and Seaplanes. May 1 through September 15, operating a motor vessel or a seaplane on the following water is prohibited:

(A) 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).

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

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

(D) 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.

(E) Dundas Bay, west of 136°25' W. longitude.

(F) Muir Inlet, north of 58°54.8' N. latitude (an imaginary line running approximately due east from Point McLeod), including Wachusett Inlet.

(viii) Noise Restrictions. June 1 through August 31, except vessels in transit or at Bartlett Cove or as otherwise permitted by the superintendent, the use of generators or other non-propulsive motors is prohibited from 10:00 p.m. until 6:00 a.m.

(ix) Other Closures and Restrictions. Notwithstanding any other provision of this Part or 43 CFR Part 36, 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 of this chapter, the superintendent may establish, designate, implement and enforce closures, restrictions, and public use limits, and terminate such closures, restrictions, and public use limits.

(B) The public shall be notified of closures, restrictions, or public use limits imposed under this paragraph, 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) When authorized by, and consistent with applicable legislation, the superintendent may issue a permit to authorize an activity otherwise prohibited or restricted under § 1.5 of this chapter.

(1) The superintendent shall include in the permit terms and conditions the superintendent deems necessary to protect park resources.

(2) [Reserved]

(D) The following are prohibited:

(1) Violating a closure, designation, use or activity restriction or condition, schedule or public use limit imposed pursuant to § 1.5 of this chapter without a permit; or,

(2) Violating a term or condition of a permit issued pursuant to paragraph (b)(3)(vii)(C)).

(E) 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 signs or a copy of the rules at each dock.

(1) Failure to obey a sign or rule is prohibited.

(2) [Reserved]

(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).

(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 paragraph (b)(3) of this section 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. (i) The following definitions shall apply to this paragraph:

(A) *Underway* means not at berth or anchor or moored or aground.

(B) *Port* means only that area comprised by Bartlett Cove and the public dock.

(ii) 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:

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

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

(C) 12 minutes in one hour while anchoring, berthing, getting underway or maneuvering in port.

\* \* \* \* \*

Dated: May 30, 1995.

**George T. Frampton, Jr.,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 95-13616 Filed 5-31-95; 3:52 pm]

BILLING CODE 4310-70-P

### 36 CFR Part 13

RIN 1024-AC05

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

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

**ACTION:** Proposed rule; availability of environmental assessment.

**SUMMARY:** This document announces the availability of an environmental assessment (EA) prepared by the National Park Service (NPS) that describes and analyzes a proposed action and five alternatives for the Glacier Bay National Park and Preserve Vessel Management Plan.

**DATES:** Comments on the EA must be received no later than August 7, 1995. Hearing dates and locations are listed under Supplementary Information, below.

**ADDRESSES:** Comments on the EA should be submitted to the Chief, Division of Environmental Quality, National Park Service, Alaska Region, 2525 Gambell Street, Room 404, Anchorage, Alaska 99503. Copies of the Glacier Bay Vessel Management Plan/ Environmental Assessment are available on request from the above address.

**FOR FURTHER INFORMATION CONTACT:** Glen Yankus, Alaska Regional Office, (907) 257-2645.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91-190, as amended), the NPS has prepared an EA for the Glacier Bay National Park and Preserve Vessel Management Plan. Open houses and hearings on the EA are scheduled in Alaska for the following dates and locations:

- June 19—Gustavus, School Gym, Open house (6:30 to 8 p.m.) and Hearing (8 p.m.)
- June 20—Juneau, Centennial Hall, Open house (2 to 4 p.m.) and Hearing (8 p.m.)
- June 21—Hoonah, Open house (6:30 to 8 p.m.) and Hearing (8 p.m.)
- June 22—Elfin Cove, Community Bld., Open House (6:30 to 8 p.m.) and Hearing (8 p.m.)

- June 23—Pelican, Community Hall, Open House (6:30 to 8 p.m.) and Hearing (8 p.m.)

- July 11—Anchorage, NPS Regional Office, 2525 Gambell St., Hearing (7 p.m.)

The vessel management plan responds to a continually growing demand for park visitation and vessel entries and addresses issues and concerns associated with vessel management and the park's marine environment. This document presents the proposed action, a no-action alternative, and four other alternatives and analyzes their environmental consequences.

The proposed action (Alternative 5) would optimize cruise ship visitor-use opportunities in Glacier Bay by raising cruise ship entry quotas. Seasonal entry quotas for cruise ships would increase by 72%. Seasonal entry quotas for tour boats, charter boats, and private boats would not change from those levels identified in the no-action alternative. The seasonal closure of designated wilderness waters to motor vessels would enhance wilderness recreation opportunities. Additional protection would be provided for sensitive resources (humpback whales, other marine mammals, and nesting birds) through special-use area closures and restrictions.

Dated: May 31, 1995.

**George T. Frampton, Jr.,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 95-13686 Filed 6-2-95; 8:45 am]

BILLING CODE 4310-70-P

### Bureau of Reclamation

43 CFR Part 426 and 427

RIN 1006-AA32

#### Acreage Limitation and Water Conservation Rules and Regulations

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice to extend comment period.

**SUMMARY:** The Bureau of Reclamation is extending the comment period published in 60 FR 16922, Apr. 3, 1995, in response to a number of requests from the public for an extension of the comment period. The extension will allow the public more time to prepare comments concerning the proposed rulemaking, Acreage Limitation and Water Conservation Rules and Regulations.