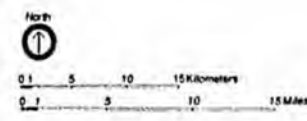


HJR

92



	Glacier Bay National Park		Trail	1560 5130	Elevations are shown in meters, with feet in italics.
	Glacier Bay National Preserve		Historic site of glaciolac		

*from Marvin Jensen
Superintendent
Glacier Bay Nat'l Park*

3/90

GLACIER BAY NATIONAL PARK - SUBSISTENCE FISHING ISSUE

Introduction

This paper provides a summary of the National Park Service position on subsistence activities as related to Glacier Bay National Park. Although the Alaska National Interest Lands Conservation Act specifically provided for subsistence uses in many new national parks in Alaska, it did not authorize subsistence activities in Glacier Bay National Park. The legislative history of the Act further clarifies that subsistence use was to be allowed in the Preserve, but not in the Park.

Statutes and Regulations Regarding Subsistence Issue

- Federal Statutes

o National Park Service Organic Act, 1916: "The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified ... by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. Sec. 1.

o Redwood National Park Act, 1978: "individually and collectively, these areas derive increased national dignity and recognition of their superb environmental quality through their inclusion jointly with each other in one national park system preserved and managed for the benefit and inspiration of all the people of the United States; and that it is the purpose of this Act to include all such areas in the system and to clarify the authorities applicable to the system. ... The authorization of activities shall be construed and the protection, management, and administration of these 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." 16 U.S.C. Sec. 1a-1.

o Alaska National Interest Lands Conservation Act (ANILCA), 1980: "Subsistence uses by local residents shall be allowed in national preserves and, where specifically permitted by this Act, in national monuments and parks." 94 Stat. 2383, Sec. 203. Subsistence uses are not specifically permitted in section 202(1) of the Act, which created Glacier Bay

National Park, whereas other sections of the Act creating other national parks do intentionally contain language specifically permitting subsistence uses.

- Legislative History

o Senate Report No.96-413, 1979: "Subsistence uses will be allowed within the preserve, but not in the park." VI. Committee Amendments, Title II - National Park System, Section 202(1): Glacier Bay National Park and National Preserve.

o Senate Report No.95-413, 1979: "Gates of the Arctic, Mount McKinley, Katmai, and Glacier Bay National Parks -- 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." VI. Committee Amendments, Title II - National Park System, Overview, p. 137.

o Congressional Record, House of Representatives, November 12, 1980: "Subsistence uses ... are not allowed in the park. ... Subsistence uses ... are allowed in the preserve in accordance with the provisions of this Act." H 10539.

Summary

The aggregate of the laws and regulations concerning national parks, and particularly Glacier Bay National Park, mandate that the National Park Service manage the Park in such a way that the landscapes and the naturally diverse ecosystems of plants, mammals, birds, fish, and other life forms be protected in an unimpaired state for their scientific value and the enjoyment of present and future generations.

Alternative Actions

(1) Prohibit subsistence use of Glacier Bay National Park in accordance with ANILCA and the management mandates of the National Park Service Organic Act.

(2) Propose revised and new regulations which would allow a closely monitored, consumptive, "food source" style fishery, for local residents, in the Park for a specified period of time while data is collected showing the extent of resources taken and the overall effect of such taking on the Park. If research and data reveal that any levels of such a "food source" fishery can occur without impairing park purposes including protecting park resources, visitor enjoyment, and scientific values then the NPS would consider supporting further regulations to allow designated levels of "food source" fishing, or legislative changes to allow "subsistence" fishing, any such uses being subject to continued monitoring and regulation.

§ 2.3 Fishing.

(a) Except in designated areas or as provided in this section, fishing shall be in accordance with the laws and regulations of the State within whose exterior boundaries a park area or portion thereof is located. Nonconflicting State laws are adopted as a part of these regulations.

(b) State fishing licenses are not required in Big Bend, Crater Lake, Denali, Glacier, Isle Royale (inland waters only), Mammoth Cave, Mount Rainier, Olympic and Yellowstone National Parks.

(c) Except in emergencies or in areas under the exclusive jurisdiction of the United States, the superintendent shall consult with appropriate State agencies before invoking the authority of § 1.5 for the purpose of restricting or closing park areas to the taking of fish.

(d) The following are prohibited:

(1) Fishing in fresh waters in any manner other than by hook and line, with the rod or line being closely attended.

(2) Possessing or using as bait for fishing in fresh waters, live or dead minnows or other bait fish, amphibians, nonpreserved fish eggs or fish roe, except in designated waters. Waters which may be so designated shall be limited to those where non-native species are already established, scientific data indicate that the introduction of additional numbers or types of non-native species would not impact populations of native species adversely, and park management plans do not call for elimination of non-native species.

(3) Chumming or placing preserved or fresh fish eggs, fish roe, food, fish parts, chemicals, or other foreign substances in fresh waters for the purpose of feeding or attracting fish in order that they may be taken.

(4) Commercial fishing, except where specifically authorized by Federal statutory law.

(5) Fishing by the use of drugs, poisons, explosives, or electricity.

(6) Digging for bait, except in privately owned lands.

(7) Failing to return carefully and immediately to the water from which it was taken a fish that does not meet

size or species restrictions or that the person chooses not to keep. Fish so released shall not be included in the catch or possession limit: *Provided*, That at the time of catching the person did not possess the legal limit of fish.

(8) Fishing from motor road bridges, from or within 200 feet of a public raft or float designated for water sports, or within the limits of locations designated as swimming beaches, surfing areas, or public boat docks, except in designated areas.

(e) Except as otherwise designated, fishing with a net, spear, or weapon in the salt waters of park areas shall be in accordance with State law.

(f) Authorized persons may check fishing licenses and permits; inspect creels, tackle and fishing gear for compliance with equipment restrictions; and inspect fish that have been taken for compliance with species, size and other taking restrictions.

(g) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[48 FR 30282, June 30, 1983, as amended at 52 FR 35240, Sept. 18, 1987]

§ 2.4 Weapons, traps and nets.

(a) (1) Except as otherwise provided in this section and Parts 7 (special regulations) and 13 (Alaska regulations), the following are prohibited:

- (i) Possessing a weapon, trap or net
- (ii) Carrying a weapon, trap or net
- (iii) Using a weapon, trap or net

(2) Weapons, traps or nets may be carried, possessed or used:

(i) At designated times and locations in park areas where:

(A) The taking of wildlife is authorized by law in accordance with § 2.2 of this chapter;

(B) The taking of fish is authorized by law in accordance with § 2.3 of this part.

(ii) When used for target practice at designated times and at facilities or locations designed and constructed specifically for this purpose and designated pursuant to special regulations.

(iii) Within a residential dwelling. For purposes of this subparagraph

REPRESENTATIVE
BEN GRUSSENDORF

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RULES COMMITTEE
LEGISLATIVE COUNCIL

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Alaska State Legislature



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House of Representatives

RULES COMMITTEE CHAIRMAN

MEMORANDUM

TO: Rep. Cliff Davidson
Co-Chairman
House Resources Committee

Rep. Curt Menard
Co-Chairman
House Resources Committee

FROM: Rep. Ben Grussendorf

DATE: March 20, 1990

RE: HJR 92, "Relating to subsistence and commercial fishing in
Glacier Bay National Park"

The House Rules Committee introduced this bill in response to the concerns expressed by commercial fishermen and subsistence users. The Citizens' Advisory Commission on Federal Areas, at the request of the Park Service, held hearings in Juneau on March 5, 1990, regarding the closing of the entire Park, including three miles offshore, to commercial fishing and subsistence use. This fishing area is of critical importance to the fishing industry. Even though the Park Service has stated verbally that they will not enforce what they consider to be their statutory authority over this area, and will conduct studies to determine if commercial and subsistence use is harmful, we believe that a statement of the State of Alaska's position on this is critical to their consideration of the issues and their interpretations of their statutes.

We would like to request your scheduling of this resolution at your earliest convenience in order for the resolution's passage this session. We realize you have a heavy committee schedule. There are no opposing groups within the state that have testified, with the possible exception of the National Wilderness Society. (There was one individual ostensibly representing them at the hearings supporting the closing of the park.) The Southeast Alaska Conservation Council supports the use of the nonwilderness areas of the Park for commercial fishing and subsistence use.

Thank you for your consideration.

Rep. Crossenobuf

Southeast Alaska Conservation Council

SEACC • P.O. Box 021692 • Juneau, Alaska 99802 • (907-586-6942)

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March 27, 1990

The Honorable Cliff Davidson
Co-Chair, House Resource Committee
Box V
Juneau, Alaska 99811

Dear Representative Davidson:

Thank you for allowing me the opportunity to testify on behalf of SEACC and the Environmental Lobby in favor of HJR 92, relating to commercial fishing and subsistence in Glacier Bay National Park.

Not all environmental groups agree with SEACC regarding commercial fishing and subsistence uses in Glacier Bay. If I left that impression, I apologize.

Alaskan Environmental groups have varying degrees of opinion regarding the extent to which Glacier Bay should be opened or closed to commercial fishing and subsistence. However, most Southeast environmental groups agree with SEACC that a complete phaseout of fishing, especially in the non-wilderness waters of the park, is inappropriate and premature until any major threats to park resources and values are identified.

In my testimony I suggested the reference in HJR 92 to subsistence fishing should be changed to subsistence uses which would include the collection of bird eggs and spruce roots, etc. My point only was that the language should be changed to address subsistence use in general.

As stated in our position paper we support establishing a process for local people and the Park Service to work together to iron out an appropriate mix of traditional uses and park values that will be in the best long-term interest of both the Park and the people.

Sincerely,

Nevette Bowen
SEACC

cc: Members, House Resources Committee



Southeast Alaska Conservation Council

SEACC • P.O. Box 021692 • Juneau, Alaska 99802 • (907-586-6942)

GLACIER BAY NATIONAL PARK MANAGEMENT

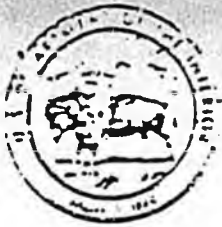
- * SEACC supports protection of park values.
- * SEACC does not support kicking commercial fishing out of Glacier Bay National Park and adjacent waters.
- * SEACC supports the continuation of existing commercial fishing uses in Glacier Bay National Park and adjacent waters.
- * SEACC also supports the restoration of traditional subsistence rights in Glacier Bay National Park.

Glacier Bay and its surroundings constitute one of the world's great national parks. SEACC supports the protection of park values to maintain the integrity of this magnificent national treasure.

It is SEACC's position that management of the park must protect park values first, yet equitably provide for appropriate and sustainable levels of historical human uses.

SEACC strongly advocates establishing a process for local people and the National Park Service to work together to iron out an appropriate mix of traditional uses and park values that will be in the best long-term interest of both the Park and the people.

Specifically, we recommend that the Park Service suspend all proposed changes in commercial fisheries management until a local advisory commission and the Park Service have identified and resolved any major conflicts between local uses and park values.



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

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Memorandum

To: Director, National Park Service
From: Associate Solicitor, Conservation and Wildlife
Subject: Commercial Fishing in Glacier Bay National Park

FACTS: The major portion of what is now Glacier Bay National Park was incorporated into the National Park System through a 1925 proclamation by President Coolidge designating the area as a national monument. 34 Stat. 225 (1925). The boundaries established by that order were modified in 1939 when President Roosevelt enlarged the monument and included certain inland and marine water areas. 53 Stat. 2534 (1939). With the enactment of the Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487, 94 Stat. 2371 (1980) (ANILCA), the monument was redesignated as a national park, further enlarged, and an adjacent national preserve was established. 16 U.S.C. 410hh-1. In addition, subsection 701(3) of ANILCA, 16 U.S.C. § 1132(3), classified most of the park's land area and some of its water zones as "wilderness." The water areas designated as wilderness are Adams Inlet, Hugh Miller Inlet, Charpentier Inlet, Rendu Inlet, Scidmore Bay, part of Dundas Bay, and the water area around the Beardslee Islands. This classification was made in accordance with subsection 3(c) of the Wilderness Act. 16 U.S.C. § 1132(c).

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Commercial fishing has occurred in Glacier Bay for many years. For the most part, this activity is concentrated in Glacier Bay and its major inlets and along the coast in the Gulf of Alaska and the Cross Sound. Commercial fishing has also occurred, to some extent, in some of the waters designated as wilderness by subsection 701(3) of ANILCA. The National Park Service (NPS) is developing proposed regulations which would prohibit motorized use in some of those areas. Dundas Bay and a portion of the Beardslee Islands waterway will be left open to motorboat use. These closures will not prohibit the use of the wilderness water zones for emergency purposes.

ISSUE: Are commercial enterprises permissible in Glacier Bay wilderness areas?

CONCLUSION: Section 707 of ANILCA mandates that wilderness areas in Alaska be managed in accordance with the provisions of the Wilderness Act. Subsection 4(c) of the Wilderness Act prohibits commercial enterprises in wilderness areas. Under subsection 701(3) of ANILCA, certain Glacier Bay water areas are designated as wilderness. This classification was imposed to preserve those areas for recreational uses. Although the Wilderness Act vests the Secretary with authority to allow otherwise prohibited aircraft and motorboat activities to occur in designated areas if it is demonstrated that they are "established uses," there is no such exemption for commercial enterprises. Accordingly, the identified Glacier Bay water areas must remain closed to commercial fishing, which we conclude is a commercial enterprise. This closure applies to commercial fishing in a very small portion of the Glacier Bay water zone. Closure is not required by this opinion for those commercial enterprises which are relied upon to realize the recreational and other wilderness purposes of designated areas (e.g., in Alaska, such activities could include expedition support, hunting and fishing guides, trapping, backcountry outfitters and guides, tourboats). See 16 U.S.C. § 1133(d)(6).

The conclusion that commercial fishing is prohibited in Glacier Bay wilderness zones is consistent with subsection 1110(a) of ANILCA, 16 U.S.C. § 3170(a), which provides that certain modes of transportation may be used in conservation system units for traditional activities permitted by law. Because commercial fishing is an activity which is not "permitted" by the Wilderness Act, it cannot occur under subsection 1110(a). When subsection 1110(a) modes of access are used to perform traditional activities permitted by law, such as recreation, they may be prohibited only after notice and hearing and a determination that they are detrimental to the resource values of the unit.

DISCUSSION

A. Requirements of the Wilderness Act.

The Wilderness Act, 16 U.S.C. § 1131 et seq., was enacted in 1964, "[i]n order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition...." 16

U.S.C. § 1131(a). To effectuate this policy, Congress established the National Wilderness Preservation System composed of Congressionally designated federal areas "where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain." 16 U.S.C. § 1131(c). Wilderness areas will also "generally [appear] to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable," present "outstanding opportunities for solitude or a primitive and unconfined type of recreation," have sufficient acreage, and contain, as appropriate, "ecological, geological, or other features of scientific, educational, scenic, or historical value." Id.

In order to preserve these values, Congress directed agencies responsible for administering wilderness areas to manage them for the "public purposes of recreational, scenic, scientific, educational, conservation, and historical use." 16 U.S.C. § 1133(b). In subsection 4(c), certain activities, judged to be inconsistent with these wilderness uses, are expressly prohibited:

Except as specifically provided for in this chapter, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area . . . there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area. 16 U.S.C. § 1133(c) (emphasis added).

In recognition of the administrative and public use difficulties which could result from a blanket application of the subsection 4(c) prohibitions, the drafters of the Act created a limited exemption for certain "established uses:"

Within wilderness areas designated by this chapter the use of aircraft or motorboats, where these uses have already become established, may be permitted to continue subject to such restrictions as the Secretary . . . deems desirable. 16 U.S.C. § 1133(d)(1) (emphasis added).

This exemption was also extended to measures necessary for the control of fire, insects, and diseases. Id. Under this subsection, the Secretary has discretion to allow these activities to occur. Should it be determined that "established" motorboat or aircraft activity is undesirable in a designated area because, for example, it would be detrimental to wilderness values, the Secretary need not invoke the "established use" exemption. Thus, under the Wilderness Act, a designated area can remain closed to all motorized use, unless paragraph 4(d)(1) is invoked, supported by appropriate administrative findings.

It is important to note that, unlike the use of motorboats and aircraft, established "commercial enterprises" were not exempted from the subsection 4(c) prohibition. This distinction is significant in that it indicates that a "commercial enterprise" which involves the use of a motorboat or aircraft cannot be allowed even if it is argued that the motorboat or aircraft is an "established use." The only exemption for commercial enterprises is found in paragraph 4(d)(6):

Commercial services may be performed within the wilderness areas designated by this chapter to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the area. 16 U.S.C. § 1133(d)(6) (emphasis added).

As is true of the paragraph 4(d)(1) "established use" exemption, the Secretary has discretion to allow these services to be performed.

B. Requirements of ANILCA.

The Glacier Bay Wilderness, consisting of approximately two million seven hundred and seventy thousand acres, was designated by subsection 701(3) of ANILCA. 16 U.S.C. § 1132(3). Although subsection 701(3) does not delineate boundaries for the wilderness area, it incorporates the official boundary maps described in section 103. 16 U.S.C. § 3103. Reference to maps GLBA-90,004 (October, 1978) indicates that the following water areas were included in the

wilderness portions of the park: Rendu Inlet, Scidmore Bay, Hugh Miller Inlet, Charpentier Inlet, Adams Inlet, part of Dundas Bay, and water areas in the vicinity of the Beardslee Islands. 1/

As Senate Report No. 413 states, this small segment of the Glacier Bay water zone was set aside as wilderness to preserve its suitability for non-motorized recreational water activities:

Glacier Bay Wilderness consists of about 2,770,000 acres of lands and waters within the expanded Glacier Bay National Park. Almost all of the park, including some salt water areas and all islands will be managed as wilderness. Excluded from wilderness are most of the marine waters

X X X X

The Committee adopted the Administration recommendation that some water areas should be specified for non-motorized water recreation. S. Rep. No. 413, 96th Cong., 1st Sess. 217 (1979) (emphasis added).

The original Glacier Bay wilderness proposal, which served as the basis for the Congressional action, verifies this goal. Submitted to Congress in August, 1972, it emphasized that the identified water areas should be included because of their "unique saltwater wilderness opportunities." U.S. Department of the Interior, Wilderness Recommendation - Glacier Bay National Monument 11, 12, 19 (August, 1972) (Wilderness Recommendation). This proposal recommended that Adams Inlet, the Hugh Miller/Charpentier Inlets complex (including Scidmore Bay), and part of Dundas Bay be designated as wilderness. Id. at 16. Congress modified this proposal by adding Pendu Inlet, and the waters around the Beardslee Islands.2/

The Wilderness Act's prohibition of commercial enterprises is applied to the Glacier Bay Wilderness through section 707 of ANILCA, which provides that, "[e]xcept as otherwise expressly provided for in this Act, wilderness designated by this Act shall be administered in accordance with applicable provisions of the Wilderness Act" Since ANILCA establishes no exception to the Wilderness Act's subsection 4(c) prohibition

of "commercial enterprises," the specified water areas of Glacier Bay are closed to commercial fishing, which is clearly a commercial enterprise.3/

The Congressional intent to prohibit commercial fishing in Glacier Bay's wilderness waters is supported further by the 1972 Wilderness Recommendation. As indicated in the ANILCA legislative history, subsection 701(3) merely codified, with some additions, the Interior Glacier Bay Wilderness Recommendation. S. Rep. No. 413, supra, at 217. Reference to the Recommendation demonstrates that special consideration was given to commercial fishing in the monument:

The use of ships, powerboats, and airplanes, and commercial fishing on waters of most of the monument are established by custom and are to continue. Powered vessels are required for safe and reasonable transportation on the major waterways. Therefore, these waters cannot be designated as wilderness, except where specific exclusions are made. Wilderness Recommendation, supra n. 1, at 17 (emphasis added).

After describing the proposed wilderness water areas and noting their "unique saltwater wilderness opportunities," the Recommendation explained, "[m]ost of the water is not proposed because of the existing use of motor-powered vessels and commercial fishing activities." Id. at 18.

Special consideration was therefore given to commercial fishing operations within the monument. Only after reviewing carefully the areas in which such activity occurred did the Administration recommend that certain zones be designated as wilderness. Those recommendations were made with the intent that commercial fishing be prohibited. Thus, by relying upon and assimilating the Interior Wilderness Recommendation, Congress adopted a designation which was designed to exclude commercial fishing from the enumerated wilderness water areas but allow it to occur in non-wilderness zones. Nothing in ANILCA mandates that non-wilderness water areas be closed to commercial fishing. Other commercial activities important to Glacier Bay wilderness purposes are not affected by this ban.4/

The prohibition of commercial fishing in Glacier Bay is consistent with subsection 1110(a) of ANILCA. 16 U.S.C. § 3170(a). That provision indicates that,

[T]he Secretary shall permit, on conservation system units. . .the use of snowmachines. . .motorboats, airplanes, and nonmotorized surface transportation methods for traditional activities (where such activities are permitted by this Act or other law) and for travel to and from villages and homesites.

The language of this provision, along with its legislative history, support an interpretation that it is only the "activity" or end use (e.g., subsistence, hunting, recreation, commercial enterprise) which must be "traditional" and "permitted" by ANILCA or other law in order to allow utilization of the identified access modes. See, e.g., S. Rep. No. 413, supra, at 247-248, 299; H. Rep. No. 97, Part I, 96th Cong., 1st Sess. 238-239, 305 (1979). In other words, subsection 1110(a) should be construed to mean that the absence of an historical pattern of snowmobile use in an area for recreational pursuits is not a basis for closure to snowmobile travel, instead it must be shown that the activity, e.g., recreation, is not "traditional" or is not "permitted."

In the case of Glacier Bay, it is not necessary to determine if commercial fishing is a "traditional activity." As concluded above, commercial fishing is an activity which is precluded under subsection 4(c) of the Wilderness Act. 16 U.S.C. § 1133(c). For this reason, it is not an activity "permitted" by law and is not covered by subsection 1110(a).

Individuals who are engaged in activities allowed under the Wilderness Act, (e.g., recreation, education, science, etc., 16 U.S.C. § 1133(b)), ANILCA, or other law, however, may utilize the subsection 1110(a) modes of transportation, subject to reasonable regulations. 16 U.S.C. § 3170(a). The use of those methods of access for "traditional" and "permitted" activities may be prohibited only if, "after notice and hearing in the vicinity of the affected unit or area," the Secretary finds that "such use would be detrimental to the resource values of the unit or area."

The proposal to prohibit motorboats in the Glacier Bay wilderness water areas (except Dundas Bay and a portion of the Bearslee) is consistent with the legislative intent for subsection 701(3). See S. Rep. No. 413, supra at 217. In accordance with subsection 1110(a), NPS has made a preliminary determination that motorboat use of these areas would be detrimental to their wilderness values and to park resources. See S. Rep. No. 413, supra, at 217. A final determination on that issue will be made after notice and hearing.

In connection with this issue, it should be noted that the Wilderness Act prohibition on "commercial enterprises" should not be read to preclude traditional commercial activities in other Alaskan wilderness areas. Recreation is among the statutory purposes of wilderness areas. As the legislative history of ANILCA recognizes, guides, outfitters and similar commercial services can be essential to the recreational utilization of Alaskan public interest lands. See, e.g., S. Rep. No. 413, supra, at 171, 308; H.R. Rep. 1045, 95th Cong., 2d Sess. 179 (1978). Moreover, reference to the legislative history of specific park units indicates that recreational activities generally reliant upon hired guides or outfitters are among the Congressionally-authorized uses of areas which have also been designated as wilderness. See, e.g., Denali National Park, S. Rep. No. 413, supra, at 167 (staging for expeditions); Lake Clark, id. at 153 (climbing); Glacier Bay, id. at 164 (white water); Noatak, id. at 156 (hunting and fishing); Wrangell-St. Elias, 16 U.S.C. § 410hh(g) (mountaineering, climbing). Congress also indicated that trapping, subsistence as well as non-subsistence, is considered a permissible wilderness activity. See id. at 308.

When these legislative references are considered in conjunction with the Wilderness Act's exemption for commercial services which are "proper" for realizing wilderness purposes, it is clear that the overall objectives of ANILCA and the Wilderness Act will be served only if the prohibition on "commercial enterprises" is not extended to traditional Alaska activities.


J. Roy Spradley, Jr.

FOOTNOTES

1/ Although Map GLBA-90,004 indicates that Dick's Arm is a wilderness water zone, NPS has determined that this is a map error and that the indicated designation was not intended by Congress.

2/ The Glacier Bay wilderness water zones can be compared to other marine wilderness areas. In Everglades National Park, for example, commercial fishing is authorized within wilderness water areas. In these areas, however, only the submerged lands are designated as wilderness. The supervening water column was excluded from the designation purposely. As the Interior wilderness recommendation noted:

The parks submerged marine lands contain one of the richest ecosystems known to man. The bottoms are essential to an immense web of animal- and plant-life. . . . Commercial fishing also would continue as before over those portions of the submerged marine-land wilderness. U.S. Department of the Interior, Wilderness Recommendation - Everglades National Park 12 (August, 1974).

Unlike Everglades, the water column in the identified Glacier Bay areas was not excluded from the designated wilderness. Obviously, commercial fishing activity cannot occur in Glacier Bay, as it can in Everglades, without impacting the protected components of the designated wilderness.

3/ Special consideration is provided to commercial fishing in section 205 of ANILCA. 16 U.S.C. § 410hh-4. There it is declared that the Secretary of the Interior "may take no action to restrict unreasonably the exercise of valid fishing rights or privileges" in certain areas, including "the Dry Bay area of Glacier Bay National Preserve." If Congress had intended to allow commercial fishing to occur in the wilderness water areas of the Park, it would have undoubtedly done so in section 205. See S. Rep. No. 413, supra n. 1, at 172. The Malaspina Glacier Forelands in Wrangell-St. Elias, for example, contains a wilderness land area which serves as a base for support facilities for commercial fishing operations. Under section 205 these "commercial enterprises" will be allowed to continue. Moreover, section 1314 of ANILCA cannot be relied

upon to exempt commercial fishing. 16 U.S.C. § 3202. Although it allows for the taking of fish on the "public lands," it provides that such activity is subject to applicable State and Federal law. Thus, the Wilderness Act prohibitions must be applied.

4/ Early versions of the precursor to ANILCA - H.R. 39 - included a special exemption for commercial fishing within wilderness areas. See H.R. 39, 96th Cong., 1st Sess. § 612(d) (1979) (House); H.R. 39, 95th Cong., 2d Sess. § 607(j) (1975) (House). Under these proposed sections, commercial fishing would have been permitted in all areas designated under the Act as wilderness, except within national parks. This provision, contained in the House version of H.R. 39, was ultimately rejected in favor of the Senate approach, which included a general administration section in Title VII - section 707 - and listed specific exemptions in section 1315. 16 U.S.C. § 3203. The section 1315 exemptions adopted some of those listed in the House version (i.e., aquaculture, existing cabins, new cabins), added some not found in the House bill (i.e., timber contracts, beach log salvage), and deleted fishery research, commercial fisheries, and several other sections. See H.R. 39, 96th Cong., 1st Sess., § 1315 (1979) (Senate). Thus, Congress chose not to enact a special section to exempt commercial fishing from Wilderness Act management constraints. It should be noted, however, that even if this provision had been included in the Act, it would not have allowed commercial fishing in national park wilderness areas such as Glacier Bay.

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Rep Crusserdorf/Kahemue
Southeast Alaska Conservation Council

SEACC • P.O. Box 021692 • Juneau, Alaska 99802 • 907-586-6942

GLACIER BAY NATIONAL PARK MANAGEMENT

- * SEACC supports protection of park values.
- * SEACC does not support kicking commercial fishing out of Glacier Bay National Park and adjacent waters.
- * SEACC supports the continuation of existing commercial fishing uses in Glacier Bay National Park and adjacent waters.
- * SEACC also supports the restoration of traditional subsistence rights in Glacier Bay National Park.

Glacier Bay and its surroundings constitute one of the world's great national parks. SEACC supports the protection of park values to maintain the integrity of this magnificent national treasure.

It is SEACC's position that management of the park must protect park values first, yet equitably provide for appropriate and sustainable levels of historical human uses.

SEACC strongly advocates establishing a process for local people and the National Park Service to work together to iron out an appropriate mix of traditional uses and park values that will be in the best long-term interest of both the Park and the people.

Specifically, we recommend that the Park Service suspend all proposed changes in commercial fisheries management until a local advisory commission and the Park Service have identified and resolved any major conflicts between local uses and park values.

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The purpose of this memorandum is to review legal and regulatory issues related to potential NPS restrictions on commercial, subsistence and personal use fishing in Glacier Bay National Park (GLBA). The memorandum includes a new perspective which could result in a NPS management stance allowing subsistence fishing and a less abrupt end to commercial fishing. Throughout this memorandum the GLBA abbreviation is used to refer to the entirety of Glacier Bay National Park, whereas the name Glacier Bay refers specifically to just the bay.

I. Commercial Fishing

A. Background

The marine waters of GLBA have been fished commercially since at least the 1890s. Commercial fishing continued despite the proclamation of the Glacier Bay area as a national monument in 1925, and its subsequent enlargement in 1939.

Under the Act of June 6, 1934, 43 Stat. 464, the Secretary of Commerce was authorized to "set apart and reserve fishing areas in any of the waters of Alaska . . . and within such areas . . . establish closed seasons during which fishing may be limited or prohibited" Alaska Fishery Regulations, Bureau of Fisheries, prohibited commercial fishing for salmon "in Glacier Bay

north of 58 degrees 27 minutes 54 seconds north latitude" in 1937. 2 Fed. Reg. 305 (February 12, 1937).

In 1939, regulation of Alaskan fisheries was transferred from the Department of Commerce to the newly formed Fish and Wildlife Service (FWS) in the Department of the Interior. By 1941, the area of Glacier Bay north of 58 degrees 27 minutes 54 seconds was opened to commercial trolling for salmon. See 6 Fed. Reg. 1252 (March 4, 1941); 50 CFR 222.17 (1941). NPS regulations during the same year acknowledged the allowance of commercial fishing in Glacier Bay National Monument. See 6 Fed. Reg. 1627 (March 26, 1941); 36 CFR 2.4(b) (1941).

In 1951, Glacier Bay north of 58 degrees 27 minutes 54 seconds was again closed to all salmon fishing. See 16 Fed. Reg. 2158 (1951); 50 CFR 117.8(d)(1951). NPS regulations continued to acknowledge FWS regulatory allowances for commercial fishing in GLBA. See 20 Fed. Reg. 618 (1955); 36 CFR 1.4(c) (1955).

In accordance with the Alaska Statehood Act of 1958, 72 Stat. 339, management of Alaska's fish and wildlife resources was transferred to the state except on "lands withdrawn or otherwise set apart as refuges or reservations for the protection of wildlife" Id. at Section 6(c). Nevertheless, FWS regulations continued in full force and effect through 1959 while the state prepared adequate management provisions required by the Act. Id. The only fishing prohibited in GLBA by said regulations continued to be salmon fishing by means other than trolling north of certain latitudes. See 24 Fed. Reg.

2053 et. seq. (March 19, 1959); 50 CFR 101 et. seq. (1959). NPS regulations continued to reference Secretarial regulatory allowances for commercial fishing in GLBA through 1966. See 27 Fed. Reg. 6281 (July 3, 1962); 36 CFR 1.4(b) (1962).

NPS regulations regarding fishing were revised in 1966 and Secretarial allowances for commercial fishing in GLBA were no longer mentioned. Fishing for "merchandise or profit" was prohibited in fresh waters of parklands. 31 Fed. Reg. 12752 (Sept. 29, 1966); 36 CFR 2.13(j)(2) (1967). The revised regulations also stated that "Fishing shall be done in conformity with all state and local laws . . . unless further restricted herein or by special regulations." Id. at 2.13(a), Alaska State law presumably allowed commercial fishing in GLBA marine waters from shortly after statehood through the present.

Enactment of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980 included designation of some wilderness in GLBA. Sec 94 Stat 2371, § 701. In accordance with the Wilderness Act of 1964 consumptive commercial activities are prohibited in wilderness areas. 78 Stat. 892, § 4(c). Consequently, commercial fishing should have come to a halt in the newly designated wilderness portions of GLBA. Nevertheless, it has been allowed to continue, most notably in the Beardslee Islands wilderness section where substantial crabbing activities are growing. ANILCA did not restrict commercial fishing in any other generally applicable wording.

In 1982, the NPS proposed revisions of general regulations including fishing regulations. See 47 Fed. Reg. 11598 et. seq. (March 17, 1982). The resultant final regulations put into effect in 1983 prohibited "commercial fishing, except where specifically authorized by Federal statutory law" including marine waters. 48 Fed. Reg. 30283 (June 30, 1983); 36 CFR 2.3(d)(4).

Nevertheless, other NPS regulations related to the protection of humpback whales in the marine waters of GLBA make reference to continuing, and impliedly allowed, commercial fishing in GLBA marine waters. See 36 CFR 13.65. Whale protection regulations referring to commercial fishing were passed as early as 1980. See 45 Fed. Reg. 85471 (Dec. 30, 1980).

Furthermore, both the NPS General Management Plan (GMP) and Final Environmental Impact Statement regarding wilderness recommendations for GLBA refer to existing and continuing commercial fishing operations.

B. Analysis

Past memoranda and opinions regarding the issue of commercial fishing in GLBA have reached varying and sometimes opposite conclusions. Generally, recent NPS memoranda have concluded that commercial fishing is not allowable. This conclusion was also presented in an informal memorandum prepared by DOI Solicitor, Ruth Ann Story, in August 1989. A formal Solicitor's opinion prepared by J. Roy Spradley, Jr. in August 1983 reached the opposite conclusion - that commercial fishing has been sanctioned by the NPS and is not prohibited. Memorandum to Deputy Undersecretary for Fish, Wildlife and Parks, from Office of the Solicitor, August 12, 1983.

IS COMMERCIAL FISHING CURRENTLY PROHIBITED IN GLBA?

Discussion of this issue should be prefaced with two seemingly unassailable conclusions. The first is that commercial fishing is specifically allowed by ANILCA in the Dry Bay Area of Glacier Bay National Preserve. See 94 Stat. 2384, § 205. The second is that commercial fishing is specifically prohibited in any designated wilderness portions of GLBA - i.e., upper Dundas Bay, Beardslee Islands area, upper Hugh Miller Inlet, Charpentier Inlet, Skidmore Bay, Rendu Inlet, and Adams Inlet. See id. at § 701; and 94 Stat. 2371, § 701.

It is clear that commercial fishing within GLBA, from the time of the original withdrawal in 1925 until 1983, was not prohibited. In fact, commercial fishing was acknowledged in NPS regulations, and regulated - in regard to methods of take, seasonal closures, etc. - by Department of Commerce and FWS regulations.

Taken at face value, the general NPS prohibition on commercial fishing, enacted in 1983, appears to prohibit any and all commercial fishing, "except where specifically authorized by Federal statutory law." 36 CFR 2.3(d)(4). However, as Solicitor Spradley's 1983 memorandum pointed out, in the case of GLBA where commercial fishing has been allowed, and even "sanctioned", it is important to look into the origin of the regulation to determine its applicability.

The revision of the NPS general regulations, that ultimately resulted in the enactment of 2.3(d)(4), was proposed in March 1982. 47 Fed. Reg. 11598. That proposal only prohibited commercial fishing in fresh waters. Id. at 11614, s 2.3(d)(5). As a result of one comment on the proposed regulations questioning the logic of the NPS prohibiting commercial fishing in fresh water but not in marine waters, the regulations were revised to enact 2.3(d)(4). See id. at 30256, 30283. The "Analysis of Comments" stated: "Engaging in commercial activities is prohibited under 36 CFR 5.3. The Service has clarified this provision to make it clear that all commercial fishing is prohibited unless authorized by federal statutory law or regulation." Id. at 30256.

A closer look at 36 CFR 5.3 and its historical relationship to NPS commercial fishing prohibitions or allowances nationwide is warranted. Section 5.3 was enacted in 1966 in its present form. Prior to that, similar regulatory language was contained in 36 CFR 2.31(b) which stated "No person, firm or corporation shall engage in or solicit any business . . . in a park or monument, without permission in writing from the Director." 36 CFR 2.31(b) (1942). The fact that at the same time this prohibition on commercial activities without permit existed, a separate regulation stating that "Fishing . . . for merchandise or profit . . . is prohibited" (except in GLBA, etc.), casts doubt on any intent that 2.4(b) was applicable to commercial fishing. 36 CFR 2.31(b) (1942). The same is true of the concurrent existence of 36 CFR 5.3 (commercial activities prohibition) and 2.13(j)(2) (commercial fresh water fishing prohibition) from 1967 to 1983. Consequently, the logic

behind using the commercial prohibition of 36 CFR 5.3 to legitimize a new prohibition on commercial fishing in marine waters, 36 CFR 2.3(b), without allowing for public comment, is questionable and potentially subject to attack.

Solicitor Spradley's opinion observed that because NPS regulations related to whale protection in Glacier Bay reference the existence of commercial fishing operations and even "indicate that NPS sanctions that activity," the activity should be considered authorized and, therefore, not prohibited by 36 CFR 2.3(d)(4). The validity of the Solicitor's conclusion is bolstered by the questionable process by which 36 CFR 2.3(d)(4) was promulgated.

The most sensible conclusion to this issue is that commercial fishing in the non-wilderness marine waters of Glacier Bay is exempt from the prohibition of 36 CFR 2.3(d)(4) due to the language of 36 CFR 13.65 sanctioning commercial fishing activities at levels at or below those existing in 1976. If it is concluded that 36 CFR 2.3(d)(4) was legitimately promulgated, it can also be argued that as of the date it took effect, October 3, 1983, commercial fishing in any areas of the park outside of Glacier Bay proper were immediately prohibited. Also, as mentioned before, as of the date of passage of ANILCA, December 2, 1980, commercial fishing was prohibited in the wilderness marine waters of GLBA.

DOES AUTHORITY EXIST TO PROHIBIT COMMERCIAL FISHING IN GLBA?

Generally, the NPS Organic Act of 1916 directs the Secretary of the Interior to "conserve the scenery and the natural and historic objects and the wildlife" in the areas within the national park system and to "provide for the enjoyment of same in such manner as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. § 1. The Organic Act also grants the Secretary 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, 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.

Given the above responsibilities and authority spelled out by Congress, and in addition, the purposes for which GLBA was established - including study of flora and fauna - it is clear that authority exists for regulating, or even prohibiting, commercial fishing to protect park resources and/or visitor enjoyment of these resources.

The state of Alaska has raised a question regarding whether the NPS has authority to regulate activities on marine waters over submerged lands to which it claims ownership. However, numerous earlier memoranda including

Solicitor's opinions have concluded that the submerged lands are federal property and, therefore, the state's objections have no validity.

Nevertheless, the NPS must be cognizant of a potential State challenge to NPS jurisdictional authority on this basis.

C. Potential Actions

1. Wilderness Marine Waters

It is advisable that the NPS take immediate steps to prohibit all commercial fishing in designated wilderness waters. To allow such fishing to occur directly contradicts the mandates of the Wilderness Act of 1964.

This action will have a significant effect on commercial crabbing operations in the designated wilderness waters of the Beardslee Islands which have apparently been allowed to continue and grow. Nevertheless, there is no authority to allow for this or any other commercial fishing activity in designated wilderness waters to continue for any period of time. Immediate, courtesy public notice, in the form of a news release stating that commercial fishing in specifically-described designated wilderness waters is prohibited, may be advisable.

2. Other Marine Waters

A variety of options related to restriction and/or prohibition of commercial fishing in non-wilderness marine waters of GLBA exist.

It is important to point out that any regulatory restriction or prohibition should be accompanied by a well developed rationale to justify such action. Implementation of such regulations may result in challenges that the agency action is arbitrary and capricious. Although judicial review of administrative action is highly deferential to the agency and the courts have stated that the Secretary has "broad discretion in determining what actions are best calculated to protect park or public land resources," factually well supported justifications for restrictions will better protect the regulatory action from potential attack.

Rationales for restrictive or prohibitive regulatory actions might include:

- derogation of park resources by commercial fishing operations;
- derogation of whale habitat by commercial fishing operations;
- derogation of visitor enjoyment by commercial fishing operations; and,
- an increase in commercial fishing vessel use beyond 1976 use levels established by 36 CFR 13.65(b)(3)(iii)(A) as maximum unregulated use levels.

It should be noted that if further protection of whale habitat is cited as a reason for commercial fishing restrictions, such justification may activate all of the procedural requirements of 36 CFR 13.65(b)(2)(iii).

- a. Option #1 - Immediate prohibition of all commercial fishing in GLBA by repeal of allowance contained in 36 CFR 13.65. By revising 36 CFR 13.65 to eliminate all references to commercial fishing the existing regulatory allowance for such commercial fishing, as noted in the Spradley opinion as an exception to the 36 CFR 2.3(d)(4) prohibition, is removed. Consequently, 36 CFR 2.3(d)(4) would be fully effectual throughout GLBA and prohibit all commercial fishing. A good rationale for this action is required.

- b. Option #2 - Develop new regulations, and amend existing regulations to: limit commercial fishing in Glacier Bay proper to current, or 1976, levels; limit commercial fishing elsewhere in GLBA to current levels; and, prohibit all commercial fishing as of designated future date. In order to limit commercial fishing in Glacier Bay proper, permits could be issued under authority of 36 CFR 13.65(b)(3) if commercial fishing vessel use has exceeded 1976 levels, or otherwise be issued according to a new regulation generally requiring authorization of commercial fishing. To limit commercial fishing in other areas of GLBA, permits could be issued under authority of 36 CFR 5.3 or a new permitting regulation potentially necessitated for Glacier Bay proper. An amendment to

36 CFR 13.65 prohibiting all commercial fishing at a designated future date within a reasonable time period (3-5 years) would need to be promulgated. This would eliminate the need for potential subjective allowances under a different type of phase-out. A good rationale for this action is required.

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II. Subsistence and Personal Use Fishing

A. Background

There are indications of sporadic traditional fishing use of marine waters within GBA by native populations of Hoonah and other local villages in prehistoric and historic times. Uses in some areas subject to glaciation have fluctuated with advances and retreats of glaciers.

As early as 1924, Congress recognized rights to subsistence/personal use fishing in Alaskan waters within the act authorizing the Secretary of Commerce

to regulate fishing in Alaska. 43 Stat. 464. That act stated: "That nothing contained herein shall prevent the taking of fish for local food requirements or for use as dog feed." Id. at 466.

By 1948, commercial fishing had apparently grown to the extent that the new managing agency, USFWS, found it necessary to more specifically protect native fishing rights. The following regulation was enacted:

§ 102.21 Native fishing rights. No trap shall be established in any site in which any Alaskan native or natives has or have any rights of fishery, by virtue of any grant or by virtue of aboriginal occupancy, by any person other than such native or natives, but this section shall not be construed as permitting any exercise of such rights contrary to any of the provisions of the regulations in this subchapter. Any native or natives claiming such rights may petition the Secretary of the Interior for a hearing with respect to the validity of such claim, and prior to any such determination such claimant and any interested parties desiring to appear in opposition to such claim shall have an opportunity to be heard.

13 Fed. Reg. 8687 (December 29, 1948); 50 CFR 102.21 (1949). "Natives and native Indians" were defined in the regulations as "Members of the aboriginal races inhabiting Alaska when annexed to the U.S. and their descendants of the whole or half blood." 13 Fed. Reg. 8685; 50 CFR 101.6. The regulations also defined "Personal use fishing" as "The taking or attempting to take of any

species of fish or shellfish for ultimate consumption by the taker and his family." 13 Fed. Reg. 8685; 50 CFR 101.9.

A 1959 amendment to the Alaska Statehood Act of 1958 mandated that:

As a compact with the United States said state and its people do agree and declare that they forever disclaim all right and title . . . to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property (including fishing rights), the right or title to which may be held by said natives or is held by the United States in trust for said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe

73 Stat. 191.

As a result of Alaska statehood, and the resultant change in fisheries management authority from the Federal government to the State (see 72 Stat. 339 § 6(e)), federal regulations regarding general, commercial, and native fishing in Alaska waters changed. The USFWS regulations enacted in 1959 to cover Alaskan fishing in the interim period before state management was begun did not include any mention of native fishing. See 15 Fed. Reg. 2054 et. seq. (March 19, 1959). The apparent importance of such regulations was to continue

strict regulation of commercial fishing. The regulations did redefine "personal use fishing" as "the taking or attempting to take of any species of fish or shellfish for purposes other than for sale or barter" including continued authorization of use as "dog-feed." Id. at 2055.

Bureau of Indian Affairs regulations, promulgated in 1960, covered native fishing rights. See 25 Fed. Reg. 3079 (April 9, 1960). The stated purpose of said regulations was to "protect certain fishing rights which have long been recognized; which derive from the Act of June 6, 1924, as amended, 48 U.S.C. 221 et. seq. [43 Stat. 464], other Federal statutes, regulations and custom; and which were secured to the Alaska Eskimos, Indians and Aleuts by section 4 of the Alaska Statehood Act of July 7, 1958." Id. The regulations also stated:

In all waters of Alaska Indians, Eskimos and Aleuts shall be permitted to take salmon or other species of fish for personal use except in those waters where the State of Alaska has determined that a complete prohibition on all fishing is necessary to prevent the destruction of existing salmon or other fish populations.

Id. at 3080; 25 CFR 88.7. This particular regulation was changed shortly thereafter to read:

Subsistence or personal use fishing rights granted by Federal law to the Indians of Alaska, are preserved in the Statehood Act. The 1960 edition of the Regulations of the Alaska Board of Fish and Game for Commercial Fishing in Alaska has substantially provided for continuance of these

rights and no additional provision therefor is made at this time in the regulations in this part.

25 Fed. Reg. 4864 (June 2, 1960).

Neither the proclamation creating GLBA in 1925, or that enlarging the Monument in 1939, made any reference to fishing. Early NPS regulations prohibited all forms of fishing in Glacier Bay National Monument, except commercial fishing, by methods other than use of a "hook and line, the rod or line being held in the hand" 36 CFR 2.4(b) (1942, 1956, 1962). In 1966 the NPS regulations regarding fishing were revised to limit the hook and line restriction to fresh waters only, thus allowing for fishing with nets, seines, traps, etc. in marine waters. See 31 Fed. Reg. 12752, § 2.13(j) (September 29, 1966). The most recent alteration of the regulations regarding fishing in marine waters specifically states that: "Except as otherwise designated, fishing with a net, spear, or weapon in the salt waters of park areas shall be in accordance with State law." 48 Fed. Reg. 30283 (June 30, 1983); 36 CFR 2.3(e) (1988). NPS regulations have consistently stated that all fishing in park areas shall or must be done in conformity with state law unless otherwise provided. See 36 CFR 2.4(b) (1942); 36 CFR 2.13(a) (1967); 36 CFR 2.3(a) (1988).

In ANILCA, Congress addressed subsistence use of park areas in various respects. Section 203 directs the Secretary to administer areas of the National Park System and allow subsistence uses "in national preserves and, where specifically permitted by this Act, in national monuments and parks."

94 Stat. 2371 (1980). Said administration is specifically made "subject to valid existing rights." Id. Subsistence uses by local residents were not specifically permitted in Glacier Bay National Park. See id. at § 202(1).

In general regard to the taking of fish and wildlife, Section 1314(c) states:

The taking of fish and wildlife in all conservation system units shall be carried out in accordance with the provisions of this Act and other State and Federal law. Those areas designated as national parks or national park system monuments in the state shall be closed to the taking of fish and wildlife, except that . . .

(2) fishing shall be permitted by the Secretary in accordance with the provisions of this Act and other applicable State and Federal law.

Id. at § 1314(c)(2).

B. Analysis

There are two ways to analyze the laws and regulations regarding subsistence fishing use and to some degree, personal fishing use, in GLBA. One analysis results in a conclusion that subsistence fishing is strictly prohibited in GLBA, the other results in a conclusion that subsistence fishing and personal use fishing is allowable.

IS SUBSISTENCE FISHING CURRENTLY PROHIBITED IN GLBA?

Recent NPS memoranda have exclusively taken the position that subsistence fishing is prohibited in GLBA. Indeed, this conclusion is the most readily apparent, although not necessarily correct.

The conclusion that subsistence use is not allowable is based upon the language of ANILCA's Section 203 which directs the Secretary to allow such uses "where specifically permitted by this Act, in national monuments and parks." Because Section 202(1), which created GLBA does not specifically permit subsistence uses it can be argued that the Secretary may not allow such use. Furthermore, the legislative history of the Act supports this conclusion. Senate Report No. 96-413 on H.R.39, the formative bill preceding ANILCA, stated: "Subsistence uses will be allowed within the preserve, but not in the park." Id. at 164 (1979). The Congressional Record of November 12, 1980 contained a similar comment that "subsistence uses, sport hunting, sport fishing [apparently in error], and trapping are not allowed in the park." Id. at 10539. In addition, Section 816 states: "All national parks and park monuments in Alaska shall be closed to the taking of wildlife except for subsistence uses to the extent specifically permitted by this Act." 94 Stat. 2430 (emphasis added). However, the section only references wildlife, not fish.

IS SUBSISTENCE FISHING, AND/OR PERSONAL USE FISHING, ALLOWABLE IN GLBA?

It is apparent that "subsistence/personal use" fishing was allowable within GLBA prior to the passage of ANILCA. The Act of 1924 authorizing the Secretary of Commerce to regulate Alaskan fisheries also recognized and

protected a right to take "fish for local food requirements or for use as dog feed." 43 Stat. 446. Nothing in the legislation creating (1925) or enlarging (1939) Glacier Bay National Monument specifically disallowed fishing. The pertinent language in the Act of 1924 remained the law of consequence until the Alaska Statehood Act was passed and amended in 1959 to ensure that fishing rights held by Indians, Eskimos, and Aleuts would be protected. See 72 Stat. 339, as amended by 73 Stat. 141, 334, 6(e). Although the State of Alaska assumed authority for management of fisheries in 1960, the Bureau of Indian Affairs clarified, in its regulations, that "subsistence or personal use fishing rights" were granted to Indians of Alaska and would be protected. See 25 Fed. Reg. 3079; and, 25 Fed. Reg. 4864.

ANILCA did not specifically prohibit subsistence/personal use activities in GLBA. AS noted, the Act did state that "subsistence uses by local residents shall be allowed in national preserves and, where specifically permitted by this Act, in national monuments and parks." 94 Stat. 2371 at § 203. Language creating Glacier Bay National Park did not specifically permit subsistence uses within the Park. Nevertheless, Section 203 also states that the Secretary's administration of the parks is "subject to valid existing rights." Id. Subsistence fishing rights are arguably valid existing rights as described above.

Section 1314(c)(2) makes it clear that the taking of fish is to be permitted by the Secretary not only in accordance with the provisions of ANILCA, but as controlled by other applicable State and Federal law as well. See id. at

§ 1314. Again, as noted in the foregoing, Federal law not only allowed subsistence/personal use fishing in Alaskan waters but required the State to protect native subsistence fishing rights.

Finally, Section 1316(a) states: "On all public lands where the taking of fish and wildlife is permitted in accordance with the provisions of this Act or other applicable State and Federal law the Secretary shall permit, subject to reasonable regulation to ensure compatibility, the continuance of existing uses See id. at § 1316 (emphasis added). Subsistence fishing is permitted by State law, and arguably protected, at least for Indians, by Federal law. See 43 Stat. 464; and, 73 Stat. 141. In order to ensure the compatibility of fishing activities and protection of park resources the NPS has promulgated fishing regulations over the years. These general regulations have affected, but arguably never eliminated subsistence/personal use fishing rights in GLBA.

In passing ANILCA, Congress found and declared that:—"The continuation of the opportunity for subsistence uses by rural residents of Alaska . . . is essential" Id. at § 801(i) (emphasis added). Congress also found that: "continuation of the opportunity for subsistence uses of resources . . . is threatened" Id. at § 801 (3) (emphasis added). Consequently, Congress declared that it was necessary "to invoke its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands Id. at § 801(4)

for continued subsistence uses on the public lands Id. at § 801(4)

(emphasis added).

In light of all of the provisions and savings clauses of ANILCA regarding subsistence uses, the taking of fish and wildlife, and the protection of park areas, does it make logical sense to interpret the act to prohibit previously existing, legally sanctioned and protected, subsistence fishing rights in the waters of GLBA? Congress was obviously dedicated to protecting the continuance of subsistence uses. Where such uses are incompatible with the protection of park resources, Congress provided the authority to restrict or potentially eliminate subsistence use. See Id. at § 810 and § 815(1). Where subsistence uses are based upon valid existing rights predating ANILCA, the Secretary can still limit such uses to protect park resources under the broad protective authority of 16 U.S.C. §§ 1, 1a-1, and 3. Consequently, an interpretation of ANILCA that allows for subsistence use in GLA is sensible and does not preclude protection of park resources, if necessary, even if restriction of subsistence uses must result.

C. Potential Actions

1. Option #1 - Prohibit subsistence and personal use fishing in GLBA by promulgation of regulations. Regardless of whether subsistence fishing in GLBA is considered statutorily prohibited or allowed by ANILCA, if the NPS wishes to make a prohibition enforceable it has been concluded that a regulation is needed. The regulation could

be literally aimed at prohibiting subsistence or personal use fishing, however, this might increase the likelihood of political reaction, or result in a battle of semantics with the Alaska Department of Fish and Game (ADF&G). If the regulation did specify a prohibition on subsistence and personal use fishing, those activities should be strictly defined.

As discussed, it might be more acceptable to generically prepare a new fishing regulation limiting all fishing, including fishing in marine waters, to use of "hook and line, with the rod or line being closely attended" based upon 36 CFR 2.3(d)(1). Of course, this would effectively eliminate commercial fishing as well. In addition, if such a simplified prohibition were adopted, the ADF&G might still issue subsistence and personal use permits and although permittees would be limited to use of hook and line they would not be subject to sportfishing bag limits.

2. Option #2 - Allow subsistence and personal use fishing to continue without regulation. As aforementioned, there is a substantial argument that subsistence and personal use fishing is allowable in CEBA. The ADF&G has issued permits for such use in 1989. If left unregulated, these uses would be limited by 36 CFR 2.3 and any applicable ADF&G regulations. Consequently, subsistence and/or personal use fishing could be pursued by permittees in fresh waters with a "hook and line" (36 CFR 2.3(d)(1)), and in marine waters "in accordance with State law" (36 CFR 2.3(c)).

There is the potential for conflict over the distinction between fresh and salt water zones. The State's definition could be accepted, or a regulation could be drawn up to define the difference. If the regulatory option is chosen in regard to this matter, it might be an issue best covered as a nation-wide regulatory amendment to 36 CFR 2.3.

3. Option #3 - Allow regulated subsistence fishing to continue, but eliminate personal use fishing. Again, this option relies on a stance that the law allows for subsistence use. Regulations within 36 CFR Part 13 would need to be revised to acknowledge allowances for subsistence fishing use in GLBA and identify criteria for qualification for such rights. It should be noted that interesting possibilities for limiting subsistence use fishing to Native Americans alone exist in this particular circumstance.

In order to eliminate personal use fishing, regulations specifically prohibiting such use in marine waters would need to be promulgated. Whether regulations prohibiting personal use in fresh waters would be deemed necessary is questionable. Currently, wherever the State might permit personal use fisheries they can exist in the parks subject only to the NPS "hook and line" restriction. To our knowledge, State authorized personal use fisheries have not posed a problem in the fresh waters of any

park area. Prohibiting personal use fishing in the fresh waters of GLBA is probably not a substantive issue. Consequently, a regulation prohibiting salt water fishing by any means other than hook and line except for subsistence, and possibly commercial permittees, would eliminate all meaningful personal use fishing.

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COMMERCIAL FISHERIES STATISTICS

GLACIER BAY NATIONAL PARK

ALASKA DEPARTMENT OF FISH AND GAME
DIVISION OF COMMERCIAL FISHERIES
MARCH 2, 1990

Table . Southeast Alaska salmon fisheries.
 Total commercial catch of salmon
 in district 114 combined fishery.

Year	Chinook	Sockeye	Coho	Pink	Chum	Total
1960	23659	96	81461	3519	277	109012
1961	12823	127	85632	4793	535	103910
1962	21688	11	72122	3272	522	97615
1963	52755	751	176468	24749	999	255722
1964	71865	380	91692	15618	611	180166
1965	30568	257	135242	18477	1771	186315
1966	20053	229	71867	8746	1256	102151
1967	25714	27	114892	20726	2070	163429
1968	32505	124	177220	26375	1112	237336
1969	35973	495	126883	37858	430	201639
1970	18123	64	96298	29690	599	144774
1971	14913	225	102681	36130	3678	157627
1972	14423	204	94087	27335	4114	140163
1973	23590	293	96117	39022	4709	163731
1974	26979	351	89736	39488	4462	161016
1975	18865	160	13641	9599	490	42755
1976	18350	187	72273	6511	588	97909
1977	21843	1705	96460	56258	3605	179871
1978	19620	894	190039	120809	5710	337072
1979	9275	1002	24006	85616	3446	123345
1980	14821	696	25513	28770	2771	72571
1981	13908	2331	94155	134518	2521	247433
1982	16900	440	132858	83529	828	234555
1983	18018	2168	114657	130309	3968	269120
1984	23434	3257	115977	105058	6024	253750
1985	15088	3145	118448	481931	10860	629472
1986	7117	452	66492	12481	2752	89294
1987	10437	3553	80443	198539	3448	296420
1988	11741	3287	75506	143996	14918	249448
1989	10999	10480	196003	714461	10632	942575
Average	21868	1246	100962	88273	3324	215673

Combined gears: handtroll power troll

Table Southeast Alaska salmon fisheries.
 Weekly number of boats of salmon
 in district 114 power troll fishery.

Stat Week	Average Midweek Date	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	Mean	Std.dev
1	Jan. 3	0	0	0	0	0	0	0	0	0	0	0	0
2	Jan. 8	0	0	0	0	0	0	0	4	3	0	4	1
3	Jan. 15	0	0	0	2	1	0	2	1	0	1	1	1
4	Jan. 22	0	0	0	0	1	0	1	0	2	0	1	1
5	Jan. 29	0	0	0	0	1	4	1	2	2	0	2	1
6	Feb. 5	0	0	0	0	0	3	3	0	1	0	2	1
7	Feb. 12	0	0	0	0	2	0	1	0	2	0	2	1
8	Feb. 19	0	1	0	0	3	2	0	0	0	1	2	1
9	Feb. 26	0	0	0	2	4	1	0	1	3	0	2	1
10	Mar. 5	0	3	1	3	8	3	0	1	2	2	3	2
11	Mar. 12	0	0	0	0	12	3	1	1	6	1	4	4
12	Mar. 19	0	1	2	2	6	2	7	1	5	12	4	4
13	Mar. 26	1	0	1	6	14	9	12	2	10	17	8	6
14	Apr. 2	0	6	5	9	23	17	12	3	17	27	13	8
15	Apr. 9	0	7	7	10	30	15	7	4	9	31	13	10
16	Apr. 16	4	11	9	17	1	18	17	7	19	0	11	7
17	Apr. 23	17	0	0	0	0	1	0	0	0	0	9	11
18	Apr. 30	17	0	0	0	0	0	0	0	0	0	17	0
19	May 7	19	0	0	0	0	0	0	0	0	0	19	0
20	May 14	30	8	0	0	0	0	0	0	0	0	19	16
21	May 21	21	35	28	55	0	0	0	0	0	0	35	15
22	May 28	29	28	43	53	0	0	0	0	0	0	38	12
23	Jun. 4	29	29	62	49	25	63	0	0	85	0	49	22
24	Jun. 11	36	15	39	56	49	61	0	0	0	0	43	17
25	Jun. 18	26	20	24	0	49	0	9	6	53	27	18	18
26	Jun. 25	35	29	50	0	57	0	31	33	0	6	34	16
27	Jul. 2	24	1	43	9	1	66	26	30	9	32	24	20
28	Jul. 9	29	38	38	40	37	59	21	28	36	67	39	14
29	Jul. 16	22	55	47	54	53	62	34	45	45	84	50	16
30	Jul. 23	13	45	47	58	63	71	46	64	62	86	56	20
31	Jul. 30	19	54	60	49	83	116	37	54	66	89	63	28
32	Aug. 6	24	67	0	55	84	98	27	47	39	112	61	31
33	Aug. 13	9	44	118	0	61	75	24	38	108	71	61	36
											0	61	43
34	Aug. 20	35	106	113	93	14	1	20	81	84	0	91	44
35	Aug. 27	8	161	111	102	133	90	67	74	74	0	109	39
36	Sep. 3	33	160	118	91	143	121	70	106	138	0	98	39
37	Sep. 10	20	107	83	93	121	147	65	106	139	0	66	28
38	Sep. 17	26	66	79	74	61	67	24	77	116	0	25	15
39	Sep. 24	0	29	44	27	0	4	7	26	37	0	5	6
40	Oct. 1	0	2	1	0	15	0	0	4	3	0	19	15
41	Oct. 8	0	2	10	11	18	0	0	26	44	0	11	13
42	Oct. 15	1	3	8	3	6	0	0	26	33	0	11	11
43	Oct. 22	0	1	7	3	8	0	0	18	31	0	10	9
44	Oct. 29	0	3	5	0	4	0	0	17	22	0	8	10
45	Nov. 5	1	0	4	1	2	0	0	13	25	0	6	8
46	Nov. 12	0	1	1	2	1	0	0	18	14	0	4	6
47	Nov. 19	1	1	2	1	1	0	1	16	9	0	5	5
48	Nov. 26	0	0	0	1	1	0	0	10	9	0	2	2
49	Dec. 3	0	0	0	2	0	0	1	4	0	0	1	1
50	Dec. 10	0	0	1	2	1	1	0	1	2	0	4	2
51	Dec. 17	0	0	0	0	0	0	1	5	5	0	2	1
52	Dec. 24	0	0	0	0	0	0	1	2	2	0	2	1

4.

Table . Southeast Alaska salmon fisheries.
 Weekly number of boats of salmon
 in district 116 power troll fishery.

Stat Week	Average Midweek Date	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	Mean	Std.dev
1	Jan. 3	0	0	0	0	0	0	0	0	0	0	0	0
2	Jan. 8	0	0	0	0	0	0	0	0	0	0	0	0
3	Jan. 15	0	0	0	0	0	0	0	0	0	0	1	0
4	Jan. 22	0	0	0	0	1	0	0	0	0	0	0	0
5	Jan. 29	0	0	0	0	0	0	0	0	0	0	1	0
6	Feb. 5	0	0	0	0	0	0	0	1	0	0	1	0
7	Feb. 12	0	0	0	0	0	0	0	0	0	0	0	0
8	Feb. 19	0	0	0	0	0	0	0	0	0	0	0	0
9	Feb. 26	0	0	0	0	0	0	0	6	0	0	6	0
10	Mar. 5	0	0	0	0	2	0	0	0	0	0	4	2
11	Mar. 12	0	0	0	5	1	0	0	1	0	0	1	1
12	Mar. 19	0	0	0	2	1	0	0	1	0	0	3	0
13	Mar. 26	0	0	0	3	0	0	0	0	1	0	1	0
14	Apr. 2	0	0	0	0	1	0	0	0	1	0	2	1
15	Apr. 9	0	0	0	0	2	0	0	0	0	0	2	1
16	Apr. 16	0	0	3	3	0	0	1	0	0	0	2	0
17	Apr. 23	2	0	0	0	0	0	0	0	0	0	2	0
18	Apr. 30	10	0	0	0	0	0	0	0	0	0	10	0
19	May 7	4	0	0	0	0	0	0	0	0	0	4	0
20	May 14	8	2	0	0	0	0	0	0	0	0	5	4
21	May 21	5	18	9	60	0	0	0	0	0	0	23	25
22	May 28	6	19	9	74	0	0	0	0	0	0	27	32
23	Jun. 4	6	19	4	46	13	26	0	0	0	0	19	16
24	Jun. 11	2	16	14	26	19	32	0	0	0	0	18	10
25	Jun. 18	3	24	2	1	10	0	5	2	0	0	7	8
26	Jun. 25	3	19	24	0	17	0	25	11	0	7	15	8
27	Jul. 2	4	0	15	0	0	38	30	26	0	20	22	12
28	Jul. 9	6	33	6	16	14	36	17	11	13	28	18	11
29	Jul. 16	0	28	30	25	29	35	24	20	26	13	26	6
30	Jul. 23	3	25	27	34	29	63	30	50	52	18	33	18
31	Jul. 30	3	66	29	53	61	101	17	36	50	15	43	29
32	Aug. 6	3	52	0	51	65	77	10	34	44	59	44	25
33	Aug. 13	12	14	76	0	52	21	3	12	75	29	33	28
34	Aug. 20	27	8	83	82	0	0	15	44	54	0	45	30
35	Aug. 27	16	70	71	129	36	85	56	83	27	0	64	35
36	Sep. 3	11	57	69	86	37	48	55	62	58	0	54	21
37	Sep. 10	5	17	35	45	32	41	22	16	41	0	28	14
38	Sep. 17	2	2	23	59	8	12	9	1	23	0	15	18
39	Sep. 24	0	1	6	23	2	1	0	0	7	0	7	8
40	Oct. 1	0	0	0	1	0	0	0	0	0	0	1	0
41	Oct. 8	0	0	0	0	0	0	0	0	0	0	0	0
42	Oct. 15	0	0	0	0	1	0	0	0	1	0	1	0
43	Oct. 22	0	0	0	0	1	0	0	0	1	0	1	0
44	Oct. 29	0	0	0	0	0	0	0	0	0	0	0	0
45	Nov. 5	0	0	0	0	0	0	0	1	0	0	1	0
46	Nov. 12	0	0	0	0	0	0	0	0	0	0	0	0
47	Nov. 19	0	0	0	0	0	0	0	0	0	0	0	0
48	Nov. 26	0	0	0	0	0	0	0	0	0	0	0	0
49	Dec. 3	0	0	0	0	0	0	0	0	0	0	0	0
50	Dec. 10	0	0	0	0	0	0	0	0	0	0	0	0
51	Dec. 17	0	0	0	0	0	0	0	0	0	0	0	0
52	Dec. 24	0	0	0	0	0	0	0	0	0	0	0	0

6.

Table . Southeast Alaska salmon fisheries.
 Weekly number of boats of salmon
 in subarea 11480 purse seine fishery.

Excun

Stat Week	Average Midweek Date	1980	1981	1982	1983	1984	1985	1986	1987	1988
23	Jun. 4	0	0	0	0	0	0	0	0	0
24	Jun.11	0	0	0	0	0	0	0	0	0
25	Jun.18	0	0	0	0	0	0	0	0	0
26	Jun.25	0	0	0	0	0	0	0	0	0
27	Jul. 2	0	0	0	0	0	0	0	0	0
28	Jul. 9	0	0	0	0	0	0	0	0	0
29	Jul.16	0	0	0	0	0	0	0	0	0
30	Jul.23	0	0	0	0	0	0	0	0	0
31	Jul.30	0	0	0	0	0	0	0	0	0
32	Aug. 6	0	0	0	0	0	0	0	0	0
33	Aug.13	0	0	0	0	0	0	0	0	0
34	Aug.20	8	0	0	0	9	4	0	26	0
35	Aug.27	0	68	0	0	19	0	17	0	15
36	Sep. 3	63	60	0	0	29	22	0	0	0
37	Sep.10	0	0	0	0	38	0	0	27	0
38	Sep.17	63	37	0	28	0	0	0	37	62
39	Sep.24	56	0	0	0	24	0	0	39	0
40	Oct. 1	0	0	0	0	0	0	18	0	0
41	Oct. 8	0	0	0	0	0	0	0	0	0
42	Oct.15	0	0	0	0	0	0	0	0	0
43	Oct.22	0	0	0	0	0	0	0	0	0
44	Oct.29	0	0	0	0	0	0	0	0	0
45	Nov. 5	0	0	0	0	0	0	0	0	0
Total		190	165	0	28	119	26	35	129	77

Page 1

Table . Southeast Alaska salmon fisheries.
 Weekly number of boats of salmon
 in subarea 11480 purse seine fishery.

Stat Week	Average Midweek Date	1989	Mean	Std.dev
23	Jun. 4	0	0	0
24	Jun.11	0	0	0
25	Jun.18	0	0	0
26	Jun.25	0	0	0
27	Jul. 2	0	0	0
28	Jul. 9	0	0	0
29	Jul.16	0	0	0
30	Jul.23	0	0	0
31	Jul.30	0	0	0
32	Aug. 6	0	0	0
33	Aug.13	2	2	0
34	Aug.20	0	12	10
35	Aug.27	0	30	26
36	Sep. 3	0	44	21
37	Sep.10	0	33	8
38	Sep.17	0	45	16
39	Sep.24	0	42	16
40	Oct. 1	0	18	0
41	Oct. 8	0	0	0
42	Oct.15	0	0	0
43	Oct.22	0	0	0
44	Oct.29	0	0	0
45	Nov. 5	0	0	0

S.

SHELLFISH STATISTICS

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
BLUE KING CRAB

02/23/1990
14:53:00

Gear: ALL GEAR TYPES

Area:

Dist:

Sub : 114700 114710 114720 114730 114740 114750 114770 0000

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGE POUNDS PER LANDING
1977/78	760	1	1	760
1978/79	508	1	1	508
1981/82	1,776	1	1	1,776
1982/83	16,335	6	10	1,634
1983/84	23,633	9	13	1,818
1984/85	793	2	2	397
1985/86	128	2	2	64
1986/87	474	3	3	158
1987/88	691	3	5	138
1988/89	2,976	1	6	496

MOST RECENT YEAR'S

SHOULD BE CONSIDERED PRELIMINARY.

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
TANNER CRAB

02/23/1990
14:52:06

Port: ALL GEAR TYPES

Area:

Dist:

Sub : 114700 114710 114720 114730 114740 114750 114770 0000

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGE POUNDS PER LANDING
1972/73	60,408	1	13	4,647
1973/74	30,809	0	5	6,162
1974/75	136,552	6	17	8,032
1975/76	142,489	7	17	8,382
1976/77	603,601	14	48	12,575
1977/78	19,864	2	2	9,932
1978/79	63,231	3	10	6,323
1979/80	129,969	8	15	8,665
1980/81	257,987	7	17	15,176
1981/82	378,866	11	23	16,472
1982/83	184,736	12	14	13,195
1983/84	204,621	12	21	9,744
1984/85	57,028	7	8	7,129
1985/86	93,864	4	11	8,533
1986/87	118,160	6	14	8,440
1987/88	61,494	8	11	5,582
1988/89	76,308	4	10	7,631

.....
MOST RECENT YEAR'S DATA SHOULD BE CONSIDERED PRELIMINARY.

13

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
SRPIMP

03/02/1990
13:45:20

Gear: ALL GEAR TYPES

Area:

Dist:

Sub : 114700 114710 114720 114730 114740 114750 114770 0000

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGE POUNDS PER LANDING
1979/80	5,499	1	1	5,499
1980/81	9,744	1	1	9,744
1981/82	336	1	1	336

MOST RECENT YEAR'S DATA SHOULD BE CONSIDERED PRELIMINARY.

15

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
TANNER CRAB

01/07/1990
13:09:15

Gear: ALL GEAR TYPES

Area:

Dist:

Sub : 114600

17.

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGES POUNDS PER LANDING
1980/81	3,492	1	1	3,492
1982/83	24,070	2	2	12,035
1983/84	3,591	1	1	3,591
1984/85	11,453	3	4	2,863
1985/86	13,137	1	6	2,190
1986/87	595	1	2	298
1987/88	6,812	3	3	2,271
1988/89	17,974	4	5	3,595

MOST RECENT YEAR'S DATA SHOULD BE CONSIDERED PRELIMINARY.

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
BROWN KING CRAB

03/02/1990

13:10:54

Gear: ALL GEAR TYPES

Area:

Dist: 116

Sub :

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGE POUNDS PER LANDING
1984/85	577	1	1	577

MOST RECENT YEAR'S DATA SHOULD BE CONSIDERED PRELIMINARY.

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
TANNER CRAB

03/02/1990

13:10:54

Gear: ALL GEAR TYPES

Area:

Dist: 116

Sub :

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGE POUNDS PER LANDING
1980/81	58,387	2	4	14,597
1983/84	2,212	1	2	1,106
1986/87	9,591	1	2	4,796
1987/88	20,303	1	2	10,152

MOST RECENT YEAR'S DATA SHOULD BE CONSIDERED PRELIMINARY.

19.

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
BLUE KING CRAB

03/02/1990

13:14:40

Gear: ALL GEAR TYPES

Area:

Dist:

Sub : 114230

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGE POUNDS PER LANDING
1982/83	1,003	3	3	334
1984/85	7	1	1	7

MOST RECENT YEAR'S DATA SHOULD BE CONSIDERED PRELIMINARY.

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
BROWN KING CRAB

03/02/1990

13:14:40

Gear: ALL GEAR TYPES

Area:

Dist:

Sub : 114230

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGE POUNDS PER LANDING
1980/81	43,401	5	5	8,680
1981/82	28,682	8	8	3,585
1982/83	44,656	8	14	3,190
1983/84	10,516	6	9	1,168
1984/85	7,016	3	4	1,754
1987/88	702	2	2	351
1988/89	3,991	3	5	798

21.

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
TANNER CRAB

03/05/1990

08:09:54

Gear: ALL GBAR TYPES

Area:

Dist:

Sub : 114800 588668 888888 888888 888888 888888 888888 888888 888888

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGE POUNDS PER LANDING
1972/73	20,759	1	4	7,690
1976/77	4,297	1	1	4,297
1977/78	30,270	2	4	7,568
1978/79	25,577	0	3	9,859
1979/80	15,192	2	4	3,798
1980/81	23,314	3	3	7,771
1981/82	72,576	6	8	9,197
1982/83	133,022	16	21	6,334
1983/84	9,660	1	1	9,660
1984/87	1,416	1	1	1,416
1987/88	30,448	4	9	3,383
1988/89	53,155	5	9	5,906

MOST RECENT YEAR'S DATA SHOULD BE CONSIDERED PRELIMINARY.

23.

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
DUNGEONS CRAB

01/05/1990

08:09:54

Gear: ALL GEAR TYPES

Area:

Dist:

Sub : 11400 00000 00000 00000 00000 00000 00000 00000 00000 00000

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGE POUNDS PER LANDING
1972/73	5,030	1	1	5,030
1973/74	3,231	0	1	3,231
1957/58	28	1	1	28

MOST RECENT YEAR'S DATA SHOULD BE CONSIDERED PRELIMINARY.

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
RED KING CRAB

01/05/1990

08:09:54

Gear: ALL GEAR TYPES

Area:

Dist:

Sub : 11400 00000 00000 00000 00000 00000 00000 00000 00000 00000

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGE POUNDS PER LANDING
1976/77	1,604	1	1	1,604
1979/80	4,760	1	2	2,130

MOST RECENT YEAR'S DATA SHOULD BE CONSIDERED PRELIMINARY.

25.



CITIZENS ADVISORY COMMISSION
on Federal Areas

Suite 4H
Fairbanks, Alaska 99701
(907) 456-2012
Fax: 456-2039

February 21, 1990

Dear interested party:

The Citizens' Advisory Commission on Federal Areas was made aware of increasing concern regarding the future of commercial and subsistence fishing in Glacier Bay National Park during its February 2-3 meeting in Juneau.

At that meeting, a number of local people described their apprehension that commercial and subsistence fishing would be terminated at Glacier Bay in the near future. During and after the meeting, the National Park Service indicated that a closure is not imminent. However, the agency does consider commercial and subsistence fishing illegal in Glacier Bay National Park, and is considering alternatives which include elimination of these activities in the future.

The Commission has decided to provide a forum for local involvement in resolving this issue. We have invited Regional Director Boyd Evison of the National Park Service to meet with local people in order to clarify his agency's position, and to participate in substantive discussions on the future of commercial and subsistence fishing in Glacier Bay National Park.

The first meeting will be held on March 5 from 1:00-5:30 p.m. in the Hickel Room of Centennial Hall, Juneau. Representatives of the Governor's office, the Alaska Department of Fish & Game, the Department of Law, commercial and sport fishing organizations, fish and game advisory bodies, Native and Conservation groups, and all other interested persons are invited to attend. For people unable to be present at the Juneau meeting, local meetings will be held in Hoonah on March 6th, Pelican on March 7th, Gustavus on March 8th and Yakutat on March 9th.

The Citizens' Advisory Commission on Federal Areas encourages you to consider this issue, attend one or more of the scheduled meetings noted above and share your views. We are hopeful that your specific suggestions will help reduce the potential for conflict in Glacier Bay National Park. For further information, please call Commission staff @ 456-2012 or Representative Peter Goll @ 465-4925.

Sincerely,

Michael Welsh

for Stan Leaphart
Executive Director

gms



Citizens' Advisory Commission on Federal Areas

Suite 401
Fairbanks, Alaska 99701
(907) 456-2012
Fax: 456-2039

F A C T S H E E T

The Citizens Advisory Commission on Federal Areas was established in 1981 by the Alaska Legislature to aid Alaskan citizens affected by the management of federal lands. When Congress passed the Alaska National Interest Lands Conservation Act (ANILCA) in December, 1980, many Alaskans feared that this legislation would create more problems, more restrictions and more regulations for the federal lands in Alaska. The Commission is designed to help avoid and, if necessary, find solutions to such problems.

WHAT DOES THE COMMISSION DO?

The Commission is an advisory agency of the executive branch of state government. Its duties include determining the impact of federal regulations, legislation and management decisions on Alaska's citizens; determining if federal agency actions follow law and Congressional intent; and recommending corrective actions for any problems it discovers.

The Commission, through the State Attorney General's office, can file suit against a federal agency or official if the Commission determines that the federal agency or official is violating an act of Congress, Congressional intent or the best interest of the State of Alaska. The Commission has until June 30, 1998 to accomplish its task.

HOW IS THE COMMISSION FUNDED?

The Commission was funded through FY 1983 by its enabling legislation. Following FY 1983, funding has been through the regular state operating budget.

HOW IS THE COMMISSION RELATED TO THE ALASKA LAND USE COUNCIL?

The Commission is entirely separate from the Alaska Land Use Council (ALUC). The ALUC was established by the ANILCA to provide for cooperative planning and management between Federal and State agencies. There are some similarities between the Council and the Commission - the desire to have cooperation, consultation, and coordination between Federal and State agencies and the citizens of Alaska. However, actions taken by and recommendations made by the Alaska Land Use Council are independent of Commission decisions. ALUC benefits from public participation gained by the functioning of its own advisory group, The Land Use Advisors Committee.

WHY IS THE COMMISSION NEEDED?

The Commission provides citizens an additional way to question and participate in the decision making process on federal lands in Alaska. The Commission provides a single agency which can deal with any complaint regarding a federal land management agency. Additionally, the Commission can identify potential problems during the development of management plans and regulations that can be corrected prior to implementation, thus avoiding unnecessary future problems. The Commission also functions as an information source for individuals or groups interested in current and future planning efforts and management activities by federal agencies.

HOW DOES THE COMMISSION IDENTIFY PROBLEMS OR CONCERNS OF LOCAL AREAS?

The Commission relies in large part on individuals to identify specific problems. Commission staff also contacts individuals and organizations to inform them of planning activities and gather input on related issues. The Commission may appoint advisory groups in any area of the state to help identify local concerns. Along with this responsibility, advisory groups may be asked to review federal regulations and management plans, and identify potential impacts brought about by the plans or regulations.

IS THE COMMISSION ONLY CONCERNED WITH THE IMPLEMENTATION OF ANILCA?

The scope of the Commission includes all federal land management areas in Alaska.

WHAT IS THE COMPOSITION OF THE COMMISSION?

The Commission has 16 members, eight appointed by the governor and eight appointed by the legislature. The eight legislative appointees include two State senators and two State representatives. Most State commissions are appointed entirely by the governor. It was hoped that legislative influence would help bring local concerns more directly to the Commission.

HOW CAN THE COMMISSION HELP ME?

You can notify any Commissioner or Commission staff member about concerns you have. The Commission can give you information or tell you where to find it on any federal land area in Alaska. If you would like more information, contact any Commission member or the Fairbanks staff at:

250 Cushman Street, Suite 4H
Fairbanks, Alaska 99701
(907) 456-2012
FAX # (907) 456-2012

April 6, 1990

SENATE JOURNAL

p. 3258

HJR 92

CS FOR HOUSE JOINT RESOLUTION NO. 92 (Resources) by the Resources Committee,

Relating to subsistence use and commercial fishing in Glacier Bay National Park.

was read the first time and referred to the Resources Committee.

April 19, 1990

SENATE JOURNAL

p. 3456

HJR 92

The Resources Committee considered CS FOR HOUSE JOINT RESOLUTION NO. 92 (Resources) (Relating to subsistence use and commercial fishing in Glacier Bay National Park) and a majority of the committee recommended do pass. The report was signed by Senator Fahrenkamp, Chair, and concurred in by Senators Halford, Frank, Zharoff, Eliason and Sturgulewski.

Zero fiscal note published today from Department of Fish and Game. Previous House zero fiscal note.

CS FOR HOUSE JOINT RESOLUTION NO. 92 (Resources) was referred to the Rules Committee.

April 24, 1990

SENATE JOURNAL

p. 3553

HJR 92

The Rules Committee considered CS FOR HOUSE JOINT RESOLUTION NO. 92 (Resources) (Relating to subsistence use and commercial fishing in Glacier Bay National Park) and a majority of the committee recommended calendar. The report was signed by Senator Sturgulewski, Chair, and concurred in by Senators Kerttula, Rodey and Kelly.

CS FOR HOUSE JOINT RESOLUTION NO. 92 (Resources) is on today's calendar.

HJR 92

Senator Rodey moved and asked unanimous consent that CS FOR HOUSE JOINT RESOLUTION NO. 92 (Resources) (Relating to subsistence use and commercial fishing in Glacier Bay National Park) be held to the April 25 calendar. Without objection, the resolution will be on the April 25 calendar.

FISCAL NOTE

REQUEST:

Revision Date: 4/12/90 Agency Affected: Dept. of Fish and Game
 Title: An Act relating to subsistence use and commercial fishing in Glacier Bay Nat. Park BRU: Subsistence
 Sponsor: Resources Committee Components: Subsistence
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

No FY 90 Fiscal Impact.

Prepared by: Steve Behnke, Director
 Division: Subsistence

Phone: 465-4147
 Date: 4-12-90

Approved by Commissioner: _____
 Agency: Department of Fish and Game

Date: 4-12-90

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Fishing In Glacier Bay National Park
 Sponsor: Rules Committee
 Requestor: House Resources Committee

Agency Affected: All Agencies
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

Prepared by: House Resources Committee Phone: 465-4944
 Division: Representative Curt Menard Date: 3/30/90

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by preparer) :
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)