

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET

DIVISION OF GOVERNMENTAL COORDINATION

August 24, 1983

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Rec'd 9/6/83
cc: State CSU Contacts

Mr. Roger Contor
Regional Director
National Park Service
2525 Gambell, Room 107
Anchorage, AK 99503

Re: NPS Proposed Rulemaking-
Access to Katmai,
Glacier Bay and Denali
State ID #AK830419-05

Dear Mr. Contor:

We have reviewed the Department of Interior (Interior), National Park Service (NPS), proposed regulations contained in 36 C.F.R. Part 13, closing certain portions of Katmai, Denali and Glacier Bay National Parks to motorized vehicle and vessel use. In particular we are concerned about the impact of the proposed regulations that would close certain waters within Glacier Bay, waters which historically have been used for trolling and other commercial fishing. A number of the other proposed closings will result in the loss of traditional access and State management authority.

These proposed closures appear to be contrary to the intent of the Alaska National Interest Lands Conservation Act (ANILCA), specifically Sections 1314, 1110, 1315, 1323 and 205 as well as Section 1133 of the Wilderness Act and various provisions of the United States Constitution. In addition, the proposed closures are contrary to the recently professed Interior "good neighbor" policy as expressed in the Federal Register 48, 54:11642-11645. Finally we believe that justification for several of the closures is based upon unsupported assumptions or inaccurate biological information. While we have no objections to the closures in Denali, we have several concerns about the Glacier Bay and Katmai proposals.

GLACIER BAY

Access has long been recognized as a problem in Glacier Bay and the proposed closures will only aggravate that problem. The loss of access will effect a hardship on persons engaged in commercial

halibut, crab and salmon trolling fishing. The most dramatic impact will be upon individuals engaged in fishing from the communities of Hoonah, Gustavus, Pelican and Elfin Cove.

The proposed closures also prohibit aircraft landings on almost all beaches. Aircraft have traditionally followed the beaches as natural flyways, and will continue to do so for safety reasons. Thus, aircraft noise, which is not discussed as a disturbance to wildlife, will not be reduced by prohibiting beach landings. Further, aircraft land only at low tide on the lower beach where the hard packed sand is more suitable for landing, thereby protecting the integrity of the upper beach. Prohibiting aircraft landings along the outer coast where boat access is difficult, will limit access to the Fairweather Range for mountain climbers and hikers. The small steelhead streams cutting through outer coast beaches are not "endangered" due to increased access. The Alaska Department of Fish and Game (DFG) reports that there is absolutely no data to indicate any "fishing pressure" problem in these streams, and describes that resource use as almost nonexistent.

Prohibiting aircraft landings within one mile of the face of a saltwater glacier yet allowing tour boats within a quarter mile is discriminatory. Why allow one motorized use in a specific area, for enhancement of the recreational experience, and deny another? Often, the only safe place to land an aircraft for viewing a glacier is directly in front of the glacier where winds coming off the glacier blow the ice away from its face and provide an area of water free from ice. In fact, tourists in Glacier Bay have heard NPS representatives remark that seeing small planes in front of a glacier gives the viewer some scale by which to compare, and better appreciate, the size of the glacier.

Hugh Miller and Adams Inlets are utilized by many aircraft and boats to take shelter from bad weather. They also provide areas where visitors can make transfers and pickups between planes and boats.

No documentation has been provided supporting the closure of the waters and shorelines of Vivid, Bartlett, Adams Island Lakes and Lake Seclusion to aircraft landings. What are the other means of access that are referenced as being routinely used to visit these areas?

We remain strongly opposed to closures of the five marine water areas in Glacier Bay to commercial fishing. Sections 203 and 1314(c)(2) of ANILCA ensure that fishing will be allowed to continue in accordance with State and federal law. Specifically, House Report No. 95-1045, part I, states: "For those areas where the water columns have been included in wilderness, the

provisions of the Wilderness Act shall apply in that the Secretary may authorize the continuation of valid existing uses of the waters. . . ." House Report 96-97, Part I, continues: ". . . many activities, especially previously existing activities, are permitted in a wilderness area so long as such activities do not permanently alter the wilderness..." (emphasis added). We assert that commercial fishing is a previously existing activity that should be allowed to continue in Glacier Bay. In this case, the legislative history is clear; Congress did not intend to preclude commercial fishing in the designation of the five marine wilderness areas.

The original wilderness study on which these marine wilderness area designations are based was conducted in 1972. On the local level, only one person present at both of the Gustavus meetings recalled such a study having been conducted. The public was not informed of these closures to traditional uses until the proposed regulations were released in April, 1983. More than ten years lapsed time separates the original study from the resurrected closures now brought to the public's attention. As a result of this time lapse, the NPS was unable to offer any valid reason for the inclusion of the Beardslee Islands within the designated marine wilderness. Public testimony at the July 9 Gustavus meeting indicated that the Beardslee Islands have been commercially harvested for crab for at least 28 years, and that the area contains the most productive crabbing grounds in the Bay.

One example of current fishery use in Glacier Bay that would be adversely impacted is presented in a paper entitled, "Glacier Bay Buying Station Operations 6/13/83-6/24/83", which was presented at the July 9 Gustavus meeting by Paul N. Dellazoppa. This report details the operations of Kake II, a buying station located in Fingers Bay in Glacier Bay. The Kake II serviced 21 fishing boats that made 45 deliveries totalling 73,103 pounds of halibut during the first opening of the 1983 halibut season. Commercial fishing is an existing and traditional use in Glacier Bay.

The text published with the proposed rules attempts to justify the closure, in part, as a means of protecting a large portion of the population of molting dusky Canada geese in Adams Inlet. DFG research by the management coordinator states, "It is important to recognize that these geese seek protected areas to molt and that they have co-existed with commercial fishermen in the Park for years without changing their molting areas because of disturbance from the fishermen." This statement clearly refutes the contention that the closure is necessary for this purpose.

The NPS interprets the Wilderness Act as requiring that certain areas within Glacier Bay be closed to motorized vehicle uses. Despite this interpretation, the proposed motorized access

closures would cover only part of the year and would exclude some areas completely. In addition the NPS proposes to close the so-called "wilderness waters" of the Bay to motorized vessel traffic for portions of the year while absolutely prohibiting existing trolling, crabbing and halibut fishing on the grounds that the fishing is a commercial activity not within an allowable exception under the Wilderness Act. Surely the irony of this position, which prohibits a few hand trollers from quietly fishing portions of the Bay while other motorized traffic, including gigantic cruise ships, roam the Bay, is not lost on your agency. The State believes the trolling and other limited fisheries within the Bay should continue as they have for years; that is, without degradation to the marine environment within the Park.

The State of Alaska finds the proposed closure justifications inconsistent with NPS's interpretation. We also find their interpretation inconsistent with ANILCA provisions, specifically in Section 1110(a) which retains traditional access. In addition, the NPS's assumption that all of the waters within the Bay are within its jurisdiction may be misplaced (Cf. Submerged Lands Act). The assumption that the waters within the Park are within the jurisdiction of NPS may run afoul of the equal footing doctrine of the United States Constitution.

Our records do not indicate that the proposed closed areas of Glacier Bay contain any unique concentrations of threatened/endangered birds or mammals (except for migrating peregrine falcons and marine mammals). We also do not have evidence of "extremely fragile rookeries that are very important to individual species" of seabirds. While it is true that a large number of Canada geese use the protected waters of the Park for molting (particularly Adam's Inlet), it should be noted that these geese are Vancouver Canada geese (B. c. fulva), not the "dusky" subspecies, and that only 2-5% of the total population of Vancouvers molt within Park boundaries. It is important to recognize that these geese seek protected areas to molt and that they have coexisted with commercial fishermen in the Park for many years without changing their molting areas because of disturbance from the fishermen.

A similar condition exists with bald eagles nesting in the Park. Eagles nest in trees, not on the beaches. Aircraft, snowmachines, and vehicles have not been documented to have a detrimental effect (as required by Sections 1110(a) of ANILCA) on tree nesting eagles elsewhere in Southeast Alaska. We know of nothing to suggest that present use of vehicular traffic is adversely affecting eagle productivity in the Glacier Bay unit.

It should also be noted that wildlife, especially bears, are not known to be deterred from areas due to dense vegetation. Rather,

bears often seek such areas for cover. People, however, are dependent on beach access and make little use of densely vegetated areas.

There has never been significant harvest of shrimp in Glacier Bay and the assumption that whales would be harmed by any such harvest appears to be speculative. Current research evidence of resource impacts is not available to support the proposed fisheries restrictions. If the NPS adopts this closure as a conservative approach to management until research is complete, we request that the regulations state that the area will be reopened if research results indicate that whales are not affected by use of these resources.

The NPS is reminded of Section 1314(a) of ANILCA and that the signed Master Memorandum of Understanding (MMOU) with the DFG recognizes the DFG as having "the primary responsibility to manage fish and resident wildlife." If the fisheries in Glacier Bay need protection in the future, limitations will be imposed by the Alaska Board of Fisheries. The NPS further agrees in the MMOU "to utilize the State's regulatory process to the maximum extent allowed by Federal law in developing new or modifying existing Federal regulations." Therefore, we request that the NPS withdraw the proposed commercial fishing closure which inhibits the State of Alaska's ability to adequately manage the fish and wildlife resources of the Bay.

We are also concerned with Interior's interpretations of ANILCA and the Wilderness Act regarding commercial fishing in wilderness waters. The State does not concede that Interior has the authority to close wilderness waters in Alaska to commercial fishing. Neither do our biological data indicate a need for such closures.

KATMAI NATIONAL PARK

The closure of Margot Creek and Ukak River drainage to aircraft landings from May 1 to November 1 each year appears to be arbitrary. It was stated by the Superintendent at the Fairbanks public meeting on July 8 that this area is being closed because it is preferable not to have airplane landings. This is a subjective judgment, and has no basis in law. Section 1110(a) of ANILCA states uses ". . . shall not be prohibited unless . . . the Secretary finds that such use would be detrimental to the resource values of the unit or area."

According to the information that was presented at public meetings, the closure of the King Salmon River drainage and a number of small lakes in that area is based on poaching problems. This rationale discriminates against the majority of the public who do not poach. Prohibiting aircraft landings will not necessarily

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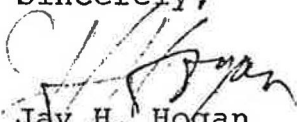
curtail the poaching problem. Better enforcement efforts by the Park Service would not limit public access and possibly would be more effective than closure of the area to aircraft. Information provided by the DFG area biologist indicates there are a number of users, including photographers, sport fishermen, and river floaters, who would be denied access to this area if the closure is implemented. The DFG biologist receives approximately ten requests for information each year from people wanting to float the King Salmon River.

The closure of the Savanoski River to motorized boats will curtail travel by the Natives presently living along the lower Naknek River to visit their historic sites and burial grounds. It is not the intent of ANILCA to close off such access. On the contrary, the drafters of the law made every effort to allow for continued access for traditional uses. According to the Bristol Bay Native Corporation, motor boats are the traditional means of visiting these sites, and requests that accommodation be made for this use.

It was stated by the Superintendent of Katmai at the Fairbanks meeting on July 8 that the beaches and river bars in the Naknek River drainage are being closed to aircraft landings to protect them. These closures are being proposed even though, as stated by the Superintendent, "There has been very little of that (airplane landings) going on." Again, there is no biological evidence to demonstrate a need for these closures. The NPS has openly admitted that many of these closures are made for aesthetic reasons alone. Finally, the discriminatory closure to wheeled plane landing on the beach and river bars will not prevent access to the beaches and river bars by float plane landings. If the intent of the closure is to protect large wildlife populations on beaches, a closure to wheeled planes will be only partially effective.

We are very concerned with the potential ramifications of the proposed regulations statewide. Interpretations of the Wilderness Act, ANILCA, and disregard for the DFG/NPS MMOU could potentially result in the NPS closing traditional access and preempting State management authorities in the ten remaining NPS units.

Sincerely,


Jay H. Hogan
Associate Director

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Mr. Roger Contor

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