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September 16, 1999

Ms. Tomie Lee
Superintendent
Glacier Bay National Park and Preserve
P.O. Box 140
Gustavus, Alaska 99826

Dear Ms. Lee:

The State of Alaska has reviewed the proposed Commercial Fishing Regulations for Glacier Bay National Park at 36 CFR Part 13, published in the Federal Register on August 2, 1999. These National Park Service regulations implement the Omnibus Act of FY 1999 as amended by Congress on May 21, 1999. The letter represents the consolidated views of the state resource agencies.

We appreciate that the preferred alternative in these reissued draft regulations allows some additional opportunities for continued commercial fishing within Glacier Bay than the April 1997 draft regulations. In addition, the Service and the State are making progress toward the development of a successful cooperative relationship. Nonetheless, we have several significant concerns with these regulations that should be addressed as soon as possible. We hope that finalization and implementation of these regulations will be as satisfactory as the Service's implementation of the Dungeness crab compensation program.

Issues covered in this letter:

- Inadequate public comment period
- Unnecessarily restrictive criteria for lifetime permits
- No apparent justification for the renewable five-year special use permit
- Failure to meet the requirements of the Regulatory Flexibility Act
- Inappropriate implied assertions of jurisdiction over commercial fishing

Inadequate Public Comment Period

Providing only 45 days for review by fishermen, communities, businesses, and others who are directly and significantly impacted by the rulemaking is unreasonable. In Alaska, federal agencies normally provide 90 days for review of major proposals due to the difficulties in reaching the affected public. Forcing a short review period in an effort to meet an arbitrary schedule is not in the agency's or public's interest. In addition, the Service's direct mail notice to the affected public was delayed three weeks. Thus those without internet Federal Register access received copies with only about 3 weeks remaining to comment by the deadline.

The brief comment period also occurs during the least convenient time for fishermen. Those who are directly impacted by these regulations do not have the economic option to stop fishing and comment on them, thus putting fishermen at an extreme disadvantage. In addition, many fishermen were unaware of the publication and had no means to receive it until returning home.

We request that the comment period be extended for at least 45 additional days. We also request the Service extend the period for preparation of the final regulations. The 10 working days currently scheduled between the comment period and publication of the final rule is inadequate to fully review, consider, and address the substantive comments received. The current schedule gives the impression that Interior has made final decisions without considering public comment.

Unnecessarily restrictive criteria for lifetime permits

We request the proposed eligibility criteria in 36 CFR Part 13.65(a)(5)(iii) *Obtaining a special use permit* (B) be revised to allow anyone who currently owns a permit for Tanner crab, halibut, or troll salmon, and anyone who has any documented history of fishing in the Bay, to continue under the lifetime permit. In our February 1, 1999 review of the Environmental Assessment and 1997 proposed rulemaking, we detailed why all persons who had participated in these fisheries should be grandfathered during this phase-out period. The Omnibus Act of 1999 as amended allows continuation of longlining for halibut, pot or ring net fishing for Tanner crab, and trolling for salmon in the Bay proper. These commercial fisheries are already managed under limited entry provisions and conservative management plans adopted by the state and North Pacific Halibut Commission. The resources are healthy. The net effect of issuing lifetime permits under this criteria will be a gradual reduction in the current level of use as fishermen retire. Further restrictions on the eligibility of those who have participated in these fisheries are unnecessary.

Renewable Five-year Special Use Permits are Unnecessary

Fishermen should not have to renew a permit every five years if they have already applied for and been granted a lifetime special use permit for access to commercial fish in the Bay. We therefore request 13.65(a)(5)(v) be deleted. As an alternative, the Service could require notification when the lifetime permit holder retires from the fishery to maintain an active list of eligible fishermen.

Failure to Meet Requirements of the Regulatory Flexibility Act

We request preparation of an environmental impact statement with a thorough economic analysis of impacts to affected local communities and small businesses. In the 1998 Environmental Assessment (EA) accompanying the original proposed rulemaking, the National Park Service failed to fully study the economic impacts to the small businesses and communities affected by the closure of Glacier Bay waters to commercial fishing. Instead, the EA baldly stated that the closures would have no significant impacts. The Small Business Administration was very critical of this arbitrary determination and concluded that "NPS must prepare an IRFA if it intends to abide by the requirements of the RFA" (SBA correspondence to the Glacier Bay superintendent February 1, 1999). For the Service to imply that they do not have to do an IRFA because the proposed rule has an impact of less than \$100 million is unreasonable in this context. The proposed rule's statement that the compensation package will mitigate these impacts is an incomplete assessment. In fact, the compensation package can itself create negative impacts if fishermen, business owners, and others, once compensated, decide to permanently leave the region. The long-term economic and social impacts must be better understood and evaluated.

Inappropriate Implied Assertions of Jurisdiction over Commercial Fishing

In the final rule, we request the Service accurately reflect Congress' stated intent that it cooperate in the state fisheries management planning process as the appropriate mechanism for managing the remaining fisheries. The summary and preamble discussion of comments that accompany the August 2, 1999 proposed rule incorrectly paraphrase provisions for continuation of commercial fisheries contained in the FY 1999 Act as amended. The record should clearly reflect the fact that Congress has not provided the Service with any jurisdiction over the remaining Glacier Bay fisheries. Neither did Congress imply that the Service could unilaterally restrict the fisheries. Congress clearly states that certain fisheries will continue and directs the Service to cooperate in the development of plans that are adopted by the state for the management of those fisheries. Congress does not suggest that commercial fisheries will only be continued if the state and the Service adopt a cooperative management plan, as stated at the end of the summary.

Thank you for the opportunity to provide these comments. We look forward to continued dialogue on these regulations and other aspects of the Congressional Glacier Bay resolution.

Sincerely,



Sally Gibert
State CSU Coordinator

cc: John Katz, Governor's Office, Washington, D.C.
Frank Rue, Commissioner, Department of Fish and Game
John Shively, Commissioner, Department of Natural Resources