

# STATE OF ALASKA

## OFFICE OF THE GOVERNOR ANILCA IMPLEMENTATION PROGRAM

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May 14, 2003

Nancy Swanton  
EIS Project Manager  
Glacier Bay National Park and Preserve Vessel EIS  
2525 Gambell Street  
Anchorage, AK 99503-2892

Dear Ms. Swanton:

The State of Alaska has reviewed the March 14, 2003, Glacier Bay National Park and Preserve Draft Vessel Quota and Operating Requirements and Environmental Impact Statement. This letter represents the consolidated views of state agencies.

The State appreciates the Service's efforts to work with numerous parties to resolve the important issues raised in this process. The purpose of this letter is to identify issues of state concern that have arisen in response to this draft plan. Because park management decisions can affect the state's management of fish and wildlife and the public's abilities to access and use the resources, we look forward to the application of coordinated interagency management strategies within park boundaries. We invite the Park Service to work with the state on these issues of concern prior to the release of the Final Glacier Bay National Park and Preserve Vessel Quota and Operating Requirements Environmental Impact Statement.

### **Jurisdictional Issues**

As the Park Service is aware, the State has long claimed title to the tide and submerged lands in Glacier Bay National Park and Preserve. Indeed, the State and the United States are now litigating the question of title in an original action before the United States Supreme Court in Alaska v. United States, No. 128, Original. The Draft EIS, however, fails to acknowledge that title is controverted. That omission is improper and we request a correction in the final EIS.

The State of Alaska has managed the water column, shore lands, tidelands, and submerged lands in the vicinity of the Glacier Bay park unit since 1959 without degradation of the resource values. The state has statutes, regulations, and a management structure in place to control all land and water uses in the area. Non-discretionary programs such as mineral entry on state shore lands, tidelands, or submerged lands have not been permitted in the vicinity of the Glacier Bay unit. The State of Alaska's coastal management plan further requires that the productivity and diversity of coastal waters be protected. The State of Alaska has an excellent record that demonstrates its willingness to protect the resources and values of the Glacier Bay area.

The state cooperated with National Marine Fisheries Service, National Park Service, and others in the adoption of the 1984 whale protection regulations. Under those regulations, the superintendent was required (36 CFR 13.65(b)(2)(iii)) to consult with other federal and state agencies and the public before designating "whale waters" in Glacier Bay. We request reintroduction of this requirement. State cooperation on those 1984 regulations does not mean the state concedes jurisdiction to enact other regulations in state waters. If, however, the state and Service can agree in concept to an overall management strategy that respects both national and state interests, jurisdictional issues become less important. The Alaska Department of Fish and Game has a vested interest in the management of marine mammals and requests continued consultation. The state understands that the Park Service is acting in response to Congressional direction to prepare this EIS. We nonetheless urge the Park Service to continue working with the state in a coordinated manner to develop a mutually-satisfactory management strategy.

## **ANILCA and Access**

In finding those solutions, the provisions of the Alaska National Interest Lands Conservation Act (ANILCA) should play a more prominent part. Because Glacier Bay Park and Preserve is subject to ANILCA, the Service's closure decisions must follow the ANILCA regulatory framework. Current regulations for Glacier Bay, 36 CFR Section 13.65(b)(3)(ix), cite to the general park regulations under 36 CFR Sections 1.5 and 1.7 instead of the ANILCA specific closure regulations set forth in 36 CFR Section 13.30 or 43 CFR Section 36.11. The state finds this to be inappropriate. To the extent, however, that Superintendent's general closure authority will continue to be identified as falling under Sections 1.5 and 1.6, we urge the Park Service to rely upon Section 1.5(b)'s criteria for heightened procedural protection. We urge that any closures or restrictions considered or authorized under this plan follow those heightened procedures to ensure that the procedural and substantive protections intended to apply under ANILCA are honored.

ANILCA's specific protection of motorized access also sets Alaska parks apart from those in the lower 48. Even in wilderness areas, motorized access can be prohibited only upon a finding that such use would be detrimental to the resource. 16 U.S.C. Section 3170, Section 1110(a). See also 43 CFR 36.11(d) and (h). Section 1110(a) of ANILCA explicitly protects access for "traditional activities", a term which remains largely undefined in the act or by regulation. The state considers the long history of tourists and amateur naturalists making visits to explore Glacier Bay to be a traditional activity in the Park. Today's visitors follow in the tradition of the early adventurers who visited the bay on sightseeing steamship excursions. While more recent visitors enjoy greater comforts, the purposes for visiting remain the same: to sightsee or recreate in this exceptional environment. Others, particularly local area residents, have long visited the area to fish or take advantage of other resources. We recommend that the Service acknowledge that these are traditional activities associated with Glacier Bay. (This is particularly relevant to the Regulatory Framework discussion at pages 4-231- 4-232.)

## **State Management of Resident Fish and Wildlife**

We found no mention of the state's management authority over resident fisheries in the State of Alaska. In the Master Memorandum of Understanding between the National Park Service and the Alaska Department of Fish and Game (ADF&G), the Service recognizes that the State of Alaska has the primary responsibility to manage fish and resident wildlife, including individual species of clams and crustaceans. At a minimum we request mention of this authority in the Regulatory Framework discussion (page 4-85) of the Environmental Consequences chapter, and in the Assumptions for Cumulative Effects Analysis that begins on page 4-7.

## **Ferry Service to Bartlett Cove**

The State realizes that this EIS addresses types and levels of vessel use, rather than allocations of that use. The State does, however, wish to take this opportunity to make recommendations which may lie at least partly outside the scope of the document. The Alaska Marine Highway System (AMHS) wishes to reserve the option to provide ferry service to Gustavus and the Park via Bartlett Cove. The AMHS will be exploring alternatives to construct a ferry terminal in the vicinity of the existing Gustavus Dock; however, Bartlett Cove may be the only affordable alternative. The Alaska Marine Highway was recently designated a scenic byway by the National Scenic Byways Program. We believe adding the Park to ports served by one of the Nation's newest scenic byways would benefit the independent traveler, the Park, and Gustavus residents. Also in the past the AMHS has provided occasional sight-seeing trips to Glacier Bay with state ferries. The State requests the opportunity to continue occasional trips to afford Alaska residents a low cost cruise of Glacier Bay as vessel availability and public interest permits.

## **Specific Comments**

The remainder of our comments are related to specific sections of the Glacier Bay National Park and Preserve Draft Vessel Quota and Operating Requirements Environmental Impact Statement. These comments do not concede that the Service has jurisdiction or authority for the plan and regulations proposed to restrict activities in the State of Alaska waters adjacent to (the uplands of) Glacier Bay National Park and Preserve. The following comments are organized chronologically, rather than order of importance.

- Pg. 1-16 to 1-17 – We request that ANILCA's provisions for access be included in the section mentioning relevant legal mandates, policies, and plans.
- Page 2-1 – Alternatives – The State is aware of concerns of Alaska residents, particularly Gustavus residents, that the limited number of short-notice (issued within 48 hours of use) daily permits available has also limited access to traditional personal use harvest of sockeye salmon in Glacier, Dundas and Berg bays. We request consideration of increasing the availability of short-notice permits for private vessel operators to improve access for personal use salmon fishers.

- Pg. 2-1 – The last bullet on this page should be clarified to note that all alternatives allow one entry *per day* for ferry service to Bartlett Cove. The State recognizes that Public Law 105-83 was passed by Congress in 1997 to accommodate *passenger* ferry service between Juneau and Glacier Bay. The State remains on record supporting a provision for both passenger and vehicle ferry service to connect the Gustavus community and the Park to the continental highway system via the Alaska Marine Highway System - a National Scenic Byway.
- Pg. 2-6 – We request this section clarify the relationship between the management of Congressional designated wilderness waters with ANILCA Section 1110(a) and supporting regulations at 43 CFR Part 36 which provide for motorized access for traditional activities in all conservation systems units, including wilderness areas. Any consideration of closures or restrictions should be consistent with the provisions of ANILCA, as noted in our general comments.
- Pg. 2-34 – We request that the Service develop and describe criteria for assessing current and ongoing research that support determinations of vessel limits in Alternative 3. In addition, it was difficult to find a list of the studies currently being used to determine these limits. Therefore, more citations or page cross-references are needed.
- Building on the research noted above, we request the final EIS recognize that the Alaska Scientific Review Group has recommended to the National Marine Fisheries Service that they examine the population stock structure of the central North Pacific stock of humpback whales, including the possibility of recognizing a separate stock for Southeast Alaska waters. If such stock restructuring occurred, the abundance for a new Southeast stock would be less than the currently recognized stock, as well as the number of whales in the Glacier Bay area thus affecting the criteria for determining vessel limits. In addition, stock restructuring would reduce the Potential Biological Removal (PBR) for Southeast Alaska. Currently, The PBR for the central North Pacific stock is 7.4/year, and the annual mortality is estimated at 3-4 whales/year. If the stock is split, this may decrease the threshold and may make annual mortality closer to, or possibly above, the PBR level for a new Southeast stock. Therefore, we request that the most current stock structure information be utilized.
- Pg. 2-39 – We request revision of the first bullet under 2.12 “*non-motorized waters allow visitors an enhanced opportunity to experience wilderness.*” In Alaska, wilderness and motorized access are not mutually exclusive. ANILCA Section 1110(a) and supporting regulations at 43 CFR Part 36 provide for motorized access for traditional activities in all conservation systems units, including wilderness areas. Any consideration of closures or restrictions should be consistent with these provisions.
- Pg. 2-49 – Marine Birds and Raptors – Alternative 3 – We request changing the wording of the sentence in the table to: *The amount of disturbances may increase if cruise ship numbers are increased.* Other entries may also warrant adjustment. The conclusions presented in the table are presented as fact, even though they may only be based on speculation, anecdotal evidence or limited preliminary studies. For example, it is our understanding that on-going studies have not yet clearly established that increased numbers do lead to more disturbances. Any statements made should reflect the actual state of knowledge.

- Pg. 3-122, Park Wilderness in Relation to the Entire National Wilderness Preservation System – We request this discussion recognize that ANILCA Section 1110(a) allows motorized use, including boats, within designated Wilderness in Alaska.
- Pg. 4-121 – We question the sentence stating that “*Some, but not all, of this decline can be attributed to the grounding of Muir glacier and the subsequent loss of ice flows that harbor seals use for haul outs.*” In a recent discussion between one of the authors cited (Ms. Mathews) and an ADF&G staff person, the proportion of harbor seals at Muir Glacier before its grounding was quite low, compared to the rest of the park. The number of harbor seals in Glacier Bay peaked in 1994-1995, which was several years after the grounding of Muir Glacier (1992). If there had been an impact of the grounding, a decline in overall numbers likely would have been observed between 1993 and 1995; yet, this did not occur.
- Pg. 4-232 The state considers the use of motorized vessels, whether for fishing, sightseeing, recreation, or other pre-ANILCA activity, a traditional activity. As discussed in our general comments above, we encourage the Service to recognize this as well. If the Service wishes to formally determine what activities are considered traditional, then we request the Park document pre-ANILCA traditional activities and methods of access through a cooperative study with the state. The Service and ADF&G completed such a cooperative study for Wrangell-St. Elias Park and Preserve, which could be used as a template.
- Pg. 5-5 The ADF&G has management authority for resident *fish* (omitted) and wildlife in the State of Alaska, including the marine waters of Glacier and Dundas Bay.
- Appendix B-1. For the final document we assume that the 2003 Compendium will replace the 2002 version that is included in the draft EIS.
- We recognize that this EIS addresses levels of use, not the allocation of that use. We also understand that the Service is working with charter operators and other concession permit holders on ways to allow operators to make better use of the park during days or times when use is low, particularly in Dundas Bay. The state requests an opportunity to review these procedures at the appropriate time.

Thank you for the opportunity to provide these comments. If you have any questions or wish to initiate further consultation, please do not hesitate to contact me.

Sincerely,

/ss/

Sally Gibert  
State ANILCA Coordinator