

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

Glacier Bay National Park, Alaska; Commercial Fishing Regulations and Environmental Assessment

AGENCY: National Park Service, Interior.
ACTION: Reopen the public comment period for the Proposed Rule and Environmental Assessment.

SUMMARY: Section 123 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 ("the Act"), signed into law on October 21, 1998, establishes statutory requirements for the management of commercial fishing in Glacier Bay National Park. The congressional managers of this legislation directed the National Park Service (NPS) "to extend the public comment period on the pending regulations (62 FR 18547, April 16, 1997) until January 15, 1999, modify the draft regulations to conform to [section 123's] language and publish the changes in the final regulations." Accordingly, the public comment period on the Proposed Rule and Environmental Assessment (EA) for commercial fishing will remain open until January 15, 1999.

DATES: Comments on the proposed rule and EA will be accepted through January 15, 1999.

ADDRESSES: Comments on the proposed rule and EA should be submitted to the Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826. Comments on the proposed rule and EA may be made on the park's Web site at <http://www.nps.gov/glba>, or by phoning the park at (907) 697-2230.

FOR FURTHER INFORMATION CONTACT: Copies of the EA and the Executive Summary are available by writing to Glen Yankus, National Park Service Support Office, 2525 Gambell St., Anchorage, Alaska 99503, or calling (907) 257-2645. The EA Executive Summary, Proposed Rule, and Section 123 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 are also available on the park's Web site at <http://www.nps.gov/glba>.

SUPPLEMENTARY INFORMATION: Section 123 of the Act (Pub. L. 105-277) directs the secretary of the interior and the state of Alaska to develop a cooperative management plan for the regulation of commercial fisheries within the park consistent with protection of park values and purposes, a prohibition on

new or expanded fisheries, and opportunities for study of marine resources. The law provides for the continuation of commercial fishing in the marine waters of Glacier Bay National Park outside Glacier Bay proper. The law limits commercial fisheries within Glacier Bay proper to Tanner crab, halibut and salmon, and limits participation in these commercial fisheries to the lifetimes of individual fishermen with a qualifying history. Areas in the upper reaches and inlets of Glacier Bay proper are closed to all commercial fishing or are limited to winter season king salmon trolling by grandfathered fishermen. Designated marine wilderness areas in the park are closed to commercial fishing. Compensation is provided for qualifying Dungeness crab fishermen displaced by closure of designated wilderness waters of the Beardslee Islands and Dundas Bay. The full text of Section 123 of the Act is provided at the end of Supplementary Information.

NPS will publish a final rule regarding commercial fishing in the marine waters of Glacier Bay National Park after the close of the public comment period, as directed by Congress. Section 123 determines by statute several aspects of the NPS's proposed rule, but leaves other aspects open for final rulemaking. For example, Section 123 establishes by statute the phase-out of commercial fishing in Glacier Bay proper proposed by the rule. However, whereas the proposed rule would have eliminated commercial fishing in the bay after a 15-year period, Section 123 allows qualifying fishermen to fish in the bay throughout their lifetimes. In deference to rulemaking, Section 123 leaves to the Secretary of the Interior the determination of the number and timeframe of years that will qualify individuals for the nontransferable lifetime permits. The proposed rule would have required a fisherman to have participated in a Glacier Bay-proper fishery for a minimum of six years during the period of 1987 through 1996 to qualify for the 15-year access permit contemplated by the proposed rule. The final rule will determine the appropriate eligibility requirement for the lifetime access permit mandated by the statute. NPS welcomes and encourages ideas on what are reasonable eligibility criteria for lifetime access to the commercial Tanner crab, halibut and salmon fisheries authorized in Glacier Bay proper by the Act. Are the eligibility criteria outlined in the proposed rule appropriate? Should a different number and timeframe of qualifying years (e.g.,

three out of a five-year period) be considered? Should the three fisheries have the same eligibility criteria, or are there differences among the fisheries that support different eligibility criteria for different fisheries?

NPS will implement the statutory requirements of Section 123 of the Act in a final rule. All issues raised by the proposed rule not explicitly resolved by Section 123 of the Act are still open for comment. For example, Section 123 of the Act directs the state of Alaska and the secretary of the interior to develop a cooperative management plan (see Section 123 (a)(1), at the end of **SUPPLEMENTARY INFORMATION**). The proposed rule also contemplated such a plan. As cooperative management is envisioned, the state would continue its role in management of commercial fisheries and NPS would contribute expertise in protection of park purposes and values; both state and federal agencies could jointly develop appropriate marine research projects. NPS seeks public comments and ideas on federal-state cooperative management to help federal and state officials begin their discussions. However, details of cooperative management will not be included in the final rulemaking because such details will be developed cooperatively with the state of Alaska.

The proposed rule (including the preamble) raises other issues not addressed by the Act, such as proposals to develop a Hoonah Tlingit cultural fishery and consider fisheries research opportunities. NPS acknowledges that some issues raised in the proposed rule may be more appropriately considered in development of a cooperative management plan with the state of Alaska. NPS will review all comments received to date on the proposed rule and EA and encourages additional comments in light of the new legislation. In addition to being published in the **Federal Register**, this notice is being mailed to all 1,300+ individuals who have already provided comment on the proposed rule. Consequently, all commenters have an opportunity to provide new or additional comments.

The full text of Section 123 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 (Pub. L. 105-277) is provided below.¹¹

¹¹ Note: The text of section 123 is provided for the convenience of the reader. The official version of section 123 appears in Pub. L. 105-277, 112 Stat. 2681.

COMMERCIAL FISHING IN GLACIER BAY NATIONAL PARK

SEC. 123. (a) GENERAL—

(1) The Secretary of the Interior and the State of Alaska shall cooperate in the development of a management plan for the regulation of commercial fisheries in Glacier Bay National Park pursuant to existing State and Federal statutes and any applicable international conservation and management treaties. Such management plan shall provide for commercial fishing in the marine waters within Glacier Bay National Park outside of Glacier Bay Proper, and in the marine waters within Glacier Bay Proper as specified in paragraphs (a)(2) through (a)(5), and shall provide for the protection of park values and purposes, for the prohibition of any new or expanded fisheries, and for the opportunity for the study of marine resources.

(2) In the nonwilderness waters within Glacier Bay Proper, commercial fishing shall be limited, by means of non-transferable lifetime access permits, solely to individuals who—

(A) Hold a valid commercial fishing permit for a fishery in a geographic area that includes the nonwilderness waters within Glacier Bay Proper;

(B) Provide a sworn and notarized affidavit and other available corroborating documentation to the Secretary of the Interior sufficient to establish that such individual engaged in commercial fishing for halibut, Tanner crab, or salmon in Glacier Bay Proper during qualifying years which shall be established by the Secretary of the Interior within one year of the date of the enactment of this Act; and

(C) Fish only with—

(i) Longline gear for halibut;

(ii) Pot or ring nets for Tanner crab;

or

(iii) Trolling gear for salmon.

(3) With respect to the individuals engaging in commercial fishing for Glacier Bay Proper pursuant to paragraph (2), no fishing shall be allowed in the West Arm of Glacier Bay Proper (West Arm) north of 58 degrees, 50 minutes north latitude except for trolling for king salmon during the period from October 1 through April 30. The waters of Johns Hopkins Inlet, Tarr Inlet and Reid Inlet shall remain closed to all commercial fishing.

(4) With respect to the individuals engaging in commercial fishing in Glacier Bay Proper pursuant to paragraph (2), no fishing shall be allowed in the East Arm of Glacier Bay Proper (East Arm) north of a line drawn from Point Caroline, through the southern end of Garforth Island to the east side of the Muir Inlet, except that trolling for king salmon during the period from October 1 through April 30 shall be allowed south of a line drawn across Muir Inlet at the southernmost point of Adams Inlet.

(5) With respect to the individuals engaging in commercial fishing in Glacier Bay Proper pursuant to paragraph (2), no fishing shall be allowed in Geikie Inlet.

(b) THE BEARDSLEE ISLANDS AND UPPER DUNDAS BAY.—Commercial fishing is prohibited in the designated wilderness waters within Glacier Bay National Park and Preserve, including the waters of the Beardslee Islands and Upper Dundas Bay. Any individual who—

(1) On or before February 1, 1999, provides a sworn and notarized affidavit and other available corroborating documentation to the Secretary of the Interior sufficient to establish that he or she has engaged in commercial fishing for Dungeness crab in the designated wilderness waters of the Beardslee Islands or Dundas Bay within Glacier Bay National Park pursuant to valid commercial fishing permit in at least six of the years during the period 1987 through 1996;

(2) At the time of receiving compensation based on the Secretary of the Interior's determination as described below—

(A) Agrees in writing not to engage in commercial fishing for Dungeness crab within Glacier Bay Proper;

(B) Relinquishes to the State of Alaska for the purposes of its retirement any commercial fishing permit for Dungeness crab for areas within Glacier Bay Proper;

(C) At the individual's option, relinquishes to the United States the Dungeness crab pots covered by the commercial fishing permit; and

(D) At the individual's option, relinquishes to the United States the fishing vessel used for Dungeness crab fishing in Glacier Bay Proper; and

(3) Holds a current valid commercial fishing permit that allows such individual to engage in commercial fishing for Dungeness crab in Glacier Bay National park, shall be eligible to receive from the United States compensation that is the greater of (i) \$400,000, or (ii) an amount equal to the fair market value (as of the date of relinquishment) of the commercial fishing permit for Dungeness crab, of any Dungeness crab pots or other Dungeness crab gear, and of not more than one Dungeness crab fishing vessel, together with an amount equal to the present value of the foregone net income from commercial fishing for Dungeness crab for the period January 1, 1999 through December 31, 2004, based on the individual's net earnings from the Dungeness crab fishery during the period January 1, 1991 through December 31, 1996. Any individual seeking such compensation shall provide the consent necessary for the Secretary of the Interior to verify such net earnings in the fishery. The Secretary of the Interior's determination of the amount to be paid shall be completed and payment shall be made within six months from the date of the application by the individuals described in this subsection and shall constitute final agency action subject to review pursuant to the Administrative Procedures Act in the United States District Court for the District of Alaska.

(c) DEFINITION AND SAVINGS CLAUSE.—

(1) As used in this section, the term "Glacier Bay Proper" shall mean the marine waters within Glacier Bay, including coves and inlets, north of a line drawn from Point Gustavus to Point Carolus.

(2) Nothing in this section is intended to enlarge or diminish Federal or State title, jurisdiction, or authority with respect to the waters of the State of Alaska, the waters within the boundaries of Glacier Bay National Park, or the tidal or submerged lands under any provision of State or Federal law.

Dated: December 4, 1998.

John Quinley,

Acting Regional Director, Alaska.

[FR Doc. 98-32997 Filed 12-10-98; 8:45 am]

BILLING CODE 4310-70-P