

105TH CONGRESS
1ST SESSION

S. 1064

To amend the Alaska National Interest Lands Conservation Act to more effectively manage visitor service and fishing activity in Glacier Bay National Park, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 24, 1997

Mr. MURKOWSKI (for himself and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Alaska National Interest Lands Conservation Act to more effectively manage visitor service and fishing activity in Glacier Bay National Park, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Glacier Bay Manage-
5 ment and Protection Act of 1997”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) the geographical area comprising Glacier
2 Bay National Park has been recognized as having
3 important national significance since the creation of
4 Glacier Bay National Monument by Presidential
5 proclamation on February 26, 1925, and the subse-
6 quent Presidential proclamation expanding the
7 monument on April 18, 1939;

8 (2) in 1980, Congress enlarged and redesign-
9 nated the monument as Glacier Bay National Park;

10 (3) the Park provides valuable opportunities for
11 the scientific study of marine and terrestrial re-
12 sources in various stages of a postglaciation period;

13 (4) the Park is a popular tourist destination for
14 cruise ship and tour boat passengers, recreational
15 boaters, fishermen, back-country kayakers, hikers,
16 and other users;

17 (5) improvements to the Park's infrastructure
18 and an increase in small passenger vessel capacity
19 within the Park are needed to provide for increased
20 enjoyment by visitors to the Park and more efficient
21 management of Park activities;

22 (6) Huna Tlingit Indians residing near Glacier
23 Bay have engaged in subsistence fishing and gather-
24 ing in and around the bay for approximately 9,000

1 years, interrupted only by periodic glacial advances,
2 and reestablished after each glacial retreat;

3 (7) commercial fishing has occurred in and
4 around Glacier Bay for over 100 years, long before
5 the area was recognized by the Federal Government;

6 (8) commercial fishing and subsistence fishing
7 and gathering in Glacier Bay National Park occur at
8 stable levels of activity that have no perceivable ad-
9 verse effect on the health or sustainability of marine
10 resources in the Park, including the marine re-
11 sources of Glacier Bay;

12 (9) commercial fishing and subsistence fishing
13 and gathering are of great importance to local resi-
14 dents who often lack other alternatives for sustain-
15 ing their livelihood; and

16 (10) the continuation of commercial fishing and
17 subsistence fishing and gathering in Glacier Bay has
18 widespread support among local residents and Gla-
19 cier Bay users, including the environmental commu-
20 nity and operators of back-country kayak tours.

21 **SEC. 3. INFRASTRUCTURE IMPROVEMENT.**

22 Section 1306 of the Alaska National Interest Lands
23 Conservation Act (16 U.S.C. 3196) is amended by adding
24 at the end the following:

25 “(c) GLACIER BAY PARK.—

1 “(1) GLACIER BAY LODGE.—

2 “(A) COOPERATIVE AGREEMENT.—The
3 Secretary may enter into a cooperative agree-
4 ment, partnership, or other contractual rela-
5 tionship with the operator of Glacier Bay Lodge
6 in Bartlett Cove for the purpose of making im-
7 provements to the Lodge and related visitor fa-
8 cilities.

9 “(B) SCOPE OF WORK.—Improvements to
10 the physical plant and infrastructure under sub-
11 paragraph (A) may include—

12 “(i) expansion of the overnight lodg-
13 ing, meeting space, and food service capac-
14 ity of the Lodge;

15 “(ii) improvement of visitor access, in-
16 cluding boat landing facilities, paths, walk-
17 ways, and vehicular access routes;

18 “(iii) construction of a visitor infor-
19 mation center and an Alaska Native cul-
20 tural center;

21 “(iv) construction of research and
22 maintenance facilities necessary to support
23 Glacier Bay National Park and Glacier
24 Bay Lodge activities;

1 “(v) construction or alteration of staff
2 housing; and

3 “(vi) correction of deficiencies that
4 may impair compliance with Federal or
5 State construction, safety, or access re-
6 quirements.

7 “(2) ALTERATION OF PARK HEADQUARTERS.—
8 Before entering into a cooperative agreement or
9 contract for alteration or expansion of National
10 Park Service facilities in or near Gustavus, Alaska,
11 the Secretary shall provide to the Committee on En-
12 ergy and Natural Resources of the Senate and the
13 Committee on Resources of the House of Represent-
14 atives a report that includes a cost-benefit analysis
15 of the alteration or expansion, including an examina-
16 tion of other reasonable alternatives to achieve the
17 desired level of service.”.

18 **SEC. 4. SMALL PASSENGER VESSELS.**

19 Section 1307 of the Alaska National Interest Lands
20 Conservation Act (16 U.S.C. 3197) is amended by adding
21 at the end the following:

22 “(d) GLACIER BAY PASSENGER VESSELS.—

23 “(1) IN GENERAL.—Not later than 9 months
24 after the date of enactment of this subsection, the
25 Secretary shall promulgate regulations to increase

1 the number of Glacier Bay entry permits available to
2 tour boats during June, July, and August to a level
3 consistent with the demand for the entries.

4 “(2) TRANSIT SEPARATE FROM TOUR BOATS.—
5 Increases in tour boat entry permits for Glacier Bay
6 under paragraph (1) shall be considered separate
7 from, and shall not affect or be affected by, the
8 number of entry permits provided to small passenger
9 vessels providing passage to and from Glacier Bay
10 Lodge.”.

11 **SEC. 5. SURVEY OF PARK USERS.**

12 Section 1307 of the Alaska National Interest Lands
13 Conservation Act (16 U.S.C. 3197) (as amended by sec-
14 tion 4) is amended by adding at the end the following:

15 “(e) SURVEY OF GLACIER BAY USERS.—

16 “(1) SURVEY DESIGN.—Not later than 60 days
17 after the date of enactment of this subsection, the
18 Secretary shall submit to the Committee on Energy
19 and Natural Resources of the Senate and the Com-
20 mittee on Resources of the House of Representatives
21 a plan for conducting a comprehensive survey of
22 Glacier Bay National Park users during the follow-
23 ing visitor season, including individuals arriving in
24 the Park on commercially operated vessels, to deter-
25 mine—

1 “(A) the extent to which the users consider
2 the activities of other groups of users of the
3 Park as having an adverse impact on the users’
4 enjoyment of the Park; and

5 “(B) the extent to which the expectations
6 of the users for the Park are being satisfied.

7 “(2) RESULTS.—Not later than December 31
8 of the calendar year in which the survey is con-
9 ducted pursuant to the plan submitted under para-
10 graph (1), the Secretary shall report to the Commit-
11 tee on Energy and Natural Resources of the Senate
12 and the Committee on Resources of the House of
13 Representatives the results of the survey and any
14 recommendations the Secretary considers necessary
15 to reconcile competing uses of the Park or satisfy
16 visitor access needs of the Park.”.

17 **SEC. 6. FISHING.**

18 Section 1314 of the Alaska National Interest Lands
19 Conservation Act (16 U.S.C. 3202) is amended by adding
20 at the end the following:

21 “(d) FISHING IN GLACIER BAY NATIONAL PARK.—

22 “(1) DEFINITIONS.—In this subsection:

23 “(A) COUNCIL.—The term ‘Council’ means
24 the Glacier Bay Fishery Science Advisory Coun-
25 cil established by paragraph (6).

1 “(B) EXTERIOR WATERS OF THE PARK.—
2 The term ‘exterior waters of the Park’ means
3 the marine waters in the Park but outside Gla-
4 cier Bay proper.

5 “(C) GLACIER BAY PROPER.—The term
6 ‘Glacier Bay proper’ means the waters of Gla-
7 cier Bay, including coves and inlets, north of a
8 line drawn from Point Gustavus to Point
9 Carolus.

10 “(D) PARK.—The term ‘Park’ means Gla-
11 cier Bay National Park.

12 “(E) RESERVE.—The term ‘Reserve’
13 means the Glacier Bay Marine Fisheries Re-
14 serve designated by paragraph (4).

15 “(F) RESIDENT POPULATION.—The term
16 ‘resident population’ means a discrete popu-
17 lation of fish or shellfish that—

18 “(i) spawns in the Park;

19 “(ii) is comprised of individual fish or
20 shellfish the majority of which spend the
21 greater part of their life cycle in the Park;
22 or

23 “(iii) is demonstrated to be reliant on
24 unique features of the Park for the sur-
25 vival of the population.

1 “(2) SUBSISTENCE USE.—

2 “(A) IN GENERAL.—Subject to subpara-
3 graph (B), subsistence fishing and gathering by
4 a local resident of the Park, including a resi-
5 dent of Hoonah, shall be allowed in the Park in
6 accordance with title VIII.

7 “(B) PERMANENT STRUCTURES.—No per-
8 manent structure associated with subsistence
9 fishing or gathering, including a set net site,
10 fish camp, cabin, or other related structure,
11 may be constructed in the Park.

12 “(3) COMMERCIAL FISHING GENERALLY.—

13 “(A) ALLOWED COMMERCIAL FISHING.—

14 “(i) IN GENERAL.—Subject to the
15 other provisions of this subsection, the Sec-
16 retary shall allow commercial fishing in the
17 Park using the following methods and
18 means in use for commercial fishing in the
19 Park during calendar years 1980 through
20 1996:

21 “(I) Trolling or seining for salm-
22 on, except that seining may not be
23 used in Glacier Bay proper.

24 “(II) Longlining.

25 “(III) Use pots or ring nets.

1 “(ii) FEDERAL AND STATE LAWS.—
2 Fishing allowed under clause (i) shall be
3 subject to any applicable Federal or State
4 law.

5 “(iii) ADVERSE IMPACT.—

6 “(I) IN GENERAL.—If the Sec-
7 retary determines that scientifically
8 valid information demonstrates a sig-
9 nificant adverse impact is occurring to
10 a resident population as a result of
11 commercial fishing in the Park, the
12 Secretary shall consult with the rel-
13 evant State fishery management au-
14 thority and may request that the au-
15 thority initiate remedial action.

16 “(II) EMERGENCY ACTION.—If
17 the Secretary determines that com-
18 mercial fishing is causing an emer-
19 gency that poses an immediate threat
20 to a Park resource, including a resi-
21 dent population of fish or shellfish,
22 and that the relevant State fishery
23 management authority is not taking
24 appropriate action, the Secretary may
25 promulgate such regulations as are

1 necessary to protect the threatened re-
2 source for the duration of the emer-
3 gency.

4 “(B) MEMORANDUM OF UNDERSTAND-
5 ING.—Not later than 90 days after the date of
6 enactment of this subsection, the Secretary and
7 the relevant State fishery management author-
8 ity shall jointly prepare and publish a memo-
9 randum of understanding that—

10 “(i) describes the respective authority
11 of the Secretary and the State fishery
12 management authority with regard to the
13 management of commercial fishing in the
14 Park; and

15 “(ii) establishes a process for con-
16 sultations and regulatory action under sub-
17 paragraph (A).

18 “(4) GLACIER BAY MARINE FISHERIES RE-
19 SERVE.—

20 “(A) DESIGNATION.—The waters of Gla-
21 cier Bay proper are designated as the Glacier
22 Bay Marine Fisheries Reserve.

23 “(B) PURPOSES.—The purposes of the Re-
24 serve are—

1 “(i) to maintain a high degree of pro-
2 tection for the living marine resources of
3 the Glacier Bay marine ecosystem;

4 “(ii) to provide for the continued
5 health, diversity, and abundance of the re-
6 sources in the Glacier Bay marine eco-
7 system;

8 “(iii) to provide a continuing oppor-
9 tunity for the conduct of fisheries science
10 in a postglacial ecological environment; and

11 “(iv) to provide for sustainable public
12 use and enjoyment of the marine resources
13 of Glacier Bay.

14 “(C) FISHING.—

15 “(i) IN GENERAL.—Subject to clauses
16 (ii) and (iii), the Reserve shall remain open
17 to fishing in accordance with paragraphs
18 (2) and (3).

19 “(ii) CLOSURES AND RESTRIC-
20 TIONS.—A closure or a restriction on time,
21 area, or method or means of access to the
22 Reserve may be implemented by the appro-
23 priate State fishery management authority
24 if the closure or restriction—

1 “(I) is recommended by the
2 Council; and

3 “(II) is required to achieve the
4 purposes of the Reserve.

5 “(iii) COMMENT.—Before implement-
6 ing a closure under clause (ii), the appro-
7 priate State fishery management authority
8 shall solicit comments from affected com-
9 mercial or subsistence users of the Re-
10 serve.

11 “(5) BEARDSLEE ISLANDS.—

12 “(A) RESTRICTION ON FISHING.—Notwith-
13 standing paragraph (4)(C), the waters of the
14 Beardslee Islands managed as wilderness shall
15 be closed to commercial fishing, except that the
16 appropriate State fishery management author-
17 ity shall allow commercial fishing for Dunge-
18 ness crab by an individual who, during calendar
19 years 1984 through 1995—

20 “(i) participated in commercial fishing
21 for Dungeness crab in the Beardslee Is-
22 lands for a minimum of 10 fishing seasons;
23 and

1 “(ii) was reliant on the fishing re-
2 ferred to in clause (i) for a significant part
3 of the individual’s fishery-related income.

4 “(B) INFORMATION.—In making a deter-
5 mination of eligibility under subparagraph (A),
6 the appropriate fishery management authority
7 shall consider all available public records as well
8 as any other information made available by the
9 prospective applicant.

10 “(C) INELIGIBILITY.—

11 “(i) IN GENERAL.—If an individual
12 engaged in commercial fishing in the wa-
13 ters of the Beardslee Islands under this
14 paragraph voluntarily ceases to participate
15 actively in the fishing for a period of at
16 least 1 year for any reason other than ill-
17 ness, injury, or national service, the indi-
18 vidual shall not be eligible to engage in
19 commercial fishing in the waters of the
20 Beardslee Islands under this paragraph.

21 “(ii) DESIGNATED SUCCESSOR.—

22 “(I) IN GENERAL.—An individual
23 who is ineligible to engage in commer-
24 cial fishing under clause (i) may, at
25 any time before or during the year in

1 which the individual ceases to partici-
2 pate actively in fishing, designate a
3 successor that may engage in commer-
4 cial fishing for Dungeness crab in the
5 waters of the Beardslee Islands under
6 this paragraph as long as the succes-
7 sor—

8 “(aa) engages in commercial
9 fishing for Dungeness crab in the
10 waters of the Beardslee Islands;
11 and

12 “(bb) is reliant on the fish-
13 ing for a significant part of the
14 individual’s fishery-related in-
15 come.

16 “(II) INELIGIBILITY OF SUCCES-
17 SOR.—If a successor designated under
18 subclause (I) voluntarily ceases to
19 participate actively in fishing in the
20 waters of the Beardslee Islands under
21 this paragraph for a period of at least
22 1 year for any reason other than ill-
23 ness, injury, or national service, the
24 individual shall no longer be eligible to
25 engage in commercial fishing in the

1 waters of the Beardslee Islands under
2 this paragraph.

3 “(D) TEMPORARY SUCCESSOR.—

4 “ (i) IN GENERAL.—If an individual el-
5 igible to engage in commercial fishing in
6 the waters of the Beardslee Islands under
7 this paragraph is forced by reason of ill-
8 ness, injury, or national service to forego
9 the fishing, the individual may designate a
10 temporary successor for a period of 1 year.

11 “ (ii) RENEWAL.—The designation of
12 a temporary successor under clause (i)
13 may be renewed yearly so long as the con-
14 dition of illness, injury, or national service
15 continues to prevent the eligible individual
16 from participating in the commercial fish-
17 ing.

18 “(E) OTHER LAW.—An individual eligible
19 to fish under this paragraph shall be subject to
20 any other Federal or State law.

21 “(F) FISHING CESSATION AGREEMENT.—

22 “ (i) IN GENERAL.—The Secretary and
23 an individual engaged in commercial fish-
24 ing under this paragraph may agree on the

1 cessation of commercial fishing by the indi-
2 vidual.

3 “(ii) DESIGNATION OF SUCCESSOR.—
4 An individual who agrees to cease commer-
5 cial fishing under clause (i) may not des-
6 ignate a successor under subparagraph
7 (C)(ii).

8 “(G) FORCED RETIREMENT OF SUCCES-
9 SOR.—The Secretary may require an individual
10 designated as a successor under subparagraph
11 (C)(ii) to cease commercial fishing under this
12 paragraph if the facility—

13 “(i) determines that cessation of com-
14 mercial fishing by the individual would be
15 significantly beneficial to the Reserve; and

16 “(ii) compensates the individual for
17 the individual’s expected lifetime earnings
18 for the commercial fishing, as determined
19 by—

20 “(I) the individual’s average an-
21 nual earnings over a 5-year period
22 from the commercial fishing; or

23 “(II) if a minimum of 5 years of
24 data on the individual’s earnings from
25 the commercial fishing are unavail-

1 able, the average annual earnings of
2 the individual's predecessor for the
3 commercial fishing.

4 “(6) FISHERY SCIENCE ADVISORY COUNCIL.—

5 “(A) ESTABLISHMENT.—There is estab-
6 lished the Glacier Bay Fishery Science Advisory
7 Council.

8 “(B) MEMBERSHIP.—

9 “(i) IN GENERAL.—The Council shall
10 consist of 5 members, of whom—

11 “(I) 2 members shall be profes-
12 sional fishery biologists appointed by
13 the Secretary;

14 “(II) 2 members shall be profes-
15 sional fishery biologists appointed by
16 the Governor of Alaska; and

17 “(III) 1 member shall be a pro-
18 fessional fishery biologist who is not
19 employed by the Federal Government
20 or the State of Alaska, who shall—

21 “(aa) be appointed jointly by
22 the Secretary and the Governor
23 of Alaska; and

24 “(bb) serve as chairperson
25 of the Council.

1 “(ii) APPOINTMENTS.—Appointments
2 to the Council shall be made not later than
3 60 days after the date of enactment of this
4 subsection.

5 “(iii) REPLACEMENT.—A Council
6 member shall serve on the Council until re-
7 placed by the authority that appointed the
8 individual.

9 “(C) RESPONSIBILITIES.—The Council
10 shall—

11 “(i) not later than 180 days after the
12 date of enactment of this subsection, pro-
13 vide a report reviewing the status of
14 knowledge about fishery resources in the
15 Park to the Secretary, the State of Alaska,
16 the Committee on Energy and Natural Re-
17 sources of the Senate, and the Committee
18 on Resources of the House of Representa-
19 tives; and

20 “(ii) not later than 1 year after the
21 date of enactment of this subsection, in
22 consultation with appropriate Federal and
23 State agencies, prepare a fisheries manage-
24 ment plan for the Reserve, including areas

1 managed as wilderness, in accordance with
2 subparagraph (D).

3 “(D) FISHERIES MANAGEMENT PLAN.—

4 The fisheries management plan referred to in
5 subparagraph (C)(ii) shall—

6 “(i) describe a framework for pursu-
7 ing opportunities for fisheries science in
8 combination with the continued harvest of
9 fish and shellfish from the Reserve, con-
10 sistent with sound management practices
11 and in accordance with recognized prin-
12 ciples for the management of sustainable
13 resources; and

14 “(ii) make such recommendations as
15 the Council considers appropriate regard-
16 ing fishery research needs and regulations
17 regarding fishing times, areas, methods,
18 and means.

19 “(E) CONTINUING RECOMMENDATION.—

20 After completing the fisheries management plan
21 under subparagraph (D), the Council shall con-
22 tinue to meet at least annually, and at such
23 other times as the Council considers necessary,
24 to provide to the Secretary and the entities re-
25 ferred to in subparagraph (C)(i) such additional

1 recommendations on fishery research and man-
 2 agement priorities and needs in the Reserve as
 3 the Council considers appropriate.

4 “(F) CONSENSUS DECISIONS.—For a rec-
 5 ommendation, designation, or determination of
 6 the Council to be effective it shall be made by
 7 consensus.

8 “(G) FACA.—The Federal Advisory Com-
 9 mittee Act (5 U.S.C. App.) shall not apply to
 10 the Council.

11 “(7) EFFECT ON TIDAL AND SUBMERGED
 12 LAND.—

13 “(A) CLAIM TO TIDAL OR SUBMERGED
 14 LAND.—

15 “(i) IN GENERAL.—Nothing is this
 16 subsection invalidates, validates, or in any
 17 other way affects any claim of the State of
 18 Alaska to title to any tidal or submerged
 19 land.

20 “(ii) FUTURE ACTION.—No action
 21 taken pursuant to or in accordance with
 22 this subsection shall bar the State of Alas-
 23 ka from asserting at any time its claim of
 24 title to any tidal or submerged land.

1 “(B) JURISDICTION.—Nothing in this sub-
2 section, and no action taken pursuant to this
3 subsection, shall expand or diminish Federal or
4 State jurisdiction, responsibility, interests, or
5 rights in the management, regulation, or con-
6 trol of waters or tidal or submerged land of the
7 State of Alaska.”.

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