must consider whether this proposed rulemaking will have a significant economic impact on a substantial number of small entities. Small entities include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant under their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities, as the regulations will only be in effect for approximately three and one half hours on one day in a limited area of San Juan Harbor and its vicinity.

Collection of Information

This proposed rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposed rule consistent with Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, and has determined that this action has been categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add temporary § 100.35T–07–056 to read as follows:

§ 100.35T–07–056 Winston Offshore Cup, San Juan, Puerto Rico.

(a) *Regulated Area:* A regulated area is established for an area starting in San Juan Bay, out the bay entrance around Punta El Morro, then East 2 nautical miles to Penon San Jorge, then back around the bay. The regulated area is established beginning at 18°28′4″N, 066°08′0″W, then North to 18°28′9″N, 066°08′0″W, then East to 18°28′7″N, 066°05′5″W, then South to 18°28′2″N, 066°05′5″W, then directly South to the Shore. This area includes San Juan Bay, except San Antonio Approach Channel, San Antonio channel, Army Terminal Channel, Army Terminal Turning Basin, and Puerto Nuevo Channel, and Graving Dock Channel. All coordinates referenced use Datum: NAD 1983.

(b) *Special Local Regulations:* Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander. Spectator craft are required to remain in a spectator area to be established by the event sponsor Puerto Rico Offshore Tour, San Juan, Puerto Rico.

(c) *Dates:* This section is effective at 12 p.m. and terminates at 3:30 p.m. AST on October 10, 1999.

Dated: July 22, 1999.

G.W. Sutton,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 99–19690 Filed 7–30–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024–AB99

Glacier Bay National Park, Alaska; Commercial Fishing Regulations

AGENCY: National Park Service, (NPS), Interior.

ACTION: Re-Proposed rule.

SUMMARY: This re-proposed rule satisfies the requirement in Pub. L. 106–31 for the Secretary of Interior to provide an opportunity for public comment of not less than 45 days. This rule implements section 123 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 (''the Act''), as amended, and establishes special regulations for commercial fisheries within the marine waters of Glacier Bay National Park (NP), Alaska. This rule, in part, amends the general regulatory prohibition on commercial fishing activities in units of the National Park System, and instead, authorizes various existing commercial fisheries to continue in most marine waters of the park subject to a cooperatively developed state/federal fisheries management plan consistent with the requirements of the Act. The rule limits commercial fisheries in Glacier Bay proper to pot and ring net fishing for Tanner crab, longlining for halibut, and trolling for salmon. The rule describes eligibility criteria that allow certain fishermen with a sufficient, reoccurring recent history of participation in Glacier Bay fisheries to continue fishing in Glacier Bay proper for their lifetimes. Moreover, the rule describes application requirements and procedures for those fishermen to follow to obtain a special use permit for lifetime access to a particular Glacier Bay proper fishery. The rule would close certain inlets and areas in the upper reaches of Glacier Bay proper to all commercial fishing by a variety of closure dates set forth in the Act, and would limit certain other areas only to winter season trolling for king salmon by qualifying fishermen. Additionally, the rule would reaffirm closure of all designated wilderness areas in the park to commercial fishing activities.

Nothing in this rule is intended to modify or restrict non-commercial fishing activities otherwise authorized under federal and non-conflicting state fishing regulations, nor to effect legislatively authorized commercial fishing activities within Glacier Bay National Preserve.

In summary, section 123 of the Act laid out four major sets of directives on commercial fishing in Glacier Bay National Park. First, it closed specifically identified areas of non-wilderness waters in Glacier Bay proper and all wilderness waters to all commercial fishing. Second, it established a process for ''grandfathering'' certain qualifying fisherman who would be allowed to continue fishing in the remaining waters of Glacier Bay proper under lifetime permits. Third, it clarified that the marine waters outside of Glacier Bay proper would remain open to commercial fishing. And fourth, it directed that the commercial fisheries that would be allowed to continue be managed in accordance with a cooperatively developed State/Federal fisheries management plan. This rule addresses the first three of these directives. The cooperative State/Federal fisheries management plan is being developed independent of this rule and will be announced at a later date.

DATES: Written comments will be accepted through September 16, 1999.

ADDRESSES: Comments should be directed to Tomie Lee, Superintendent,

Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826.

FOR FURTHER INFORMATION CONTACT: Tomie Lee, Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska, 99827, telephone: (907) 697–2230.

SUPPLEMENTARY INFORMATION:

Background

Establishment of Glacier Bay National Park and Preserve Glacier Bay National Park and Preserve is a 3.3 million acre, glacier-crowned, marine wilderness that stretches northward from Alaska's Inside Passage to the Alsek River, encircling the magnificent, saltwater Glacier Bay. The park derives its name and much of its biological and cultural significance from this great Bay, which harbors spectacular tidewater glaciers and a unique assemblage of marine and terrestrial life.

Glacier Bay National Monument was established by presidential proclamation dated February 26, 1925. 43 Stat. 1988. The monument was established to protect a number of tidewater and other glaciers, and a variety of post glacial forest and other vegetative covering, and also to provide opportunities for scientific study of glacial activity and post glacial biological succession. The early monument included marine waters within Glacier Bay north of a line running approximately from Geikie Inlet on the west side of the bay to the northern extent of the Beardslee Islands on the east side of the bay. The monument was expanded by a second presidential proclamation on April 18, 1939. 53 Stat. 2534. The expanded monument included additional lands and marine waters consisting of all of Glacier Bay proper; portions of Cross Sound, North Inian Pass, North Passage, Icy Passage, and Excursion Inlet; and Pacific coastal waters to a distance of three miles seaward between Cape Spencer to the south and Sea Otter Creek, north of Cape Fairweather.

Glacier Bay National Monument was designated as Glacier Bay National Park and Preserve and enlarged in 1980 by the Alaska National Interest Lands Conservation Act (ANILCA). 16 U.S.C. 410hh–1; see Sen. Rep. No. 413, 96th Cong., 1st Sess. 163 (1979). The legislative history of ANILCA indicates that certain NPS units in Alaska, including Glacier Bay National Park, ''* * * are intended to be large sanctuaries where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause.'' Id. at 137; see Cong. Rec. H10532 (1980). Congress described the park as including the adjacent marine waters, and depicted the park accordingly on the official maps.

In addition, ANILCA designated several marine areas within and near Glacier Bay proper as additions to the National Wilderness Preservation System. 16 U.S.C. 1132 note. These areas include upper Dundas Bay, Adams Inlet, the Hugh Miller Inlet complex, Rendu Inlet, and waters in and around the Beardslee Islands.

Within the park's jurisdiction are over 600,000 acres of marine waters, including 53,000 acres of designated wilderness. As a result, Glacier Bay National Park is one of only a handful of conservation areas in the world that includes extensive saltwater habitat. It is also the largest marine area managed by the National Park Service (NPS). As such, it provides valuable opportunities to study and enjoy marine flora and fauna in an unimpaired state, and to educate the public about the biological richness of marine systems and relationship to adjacent glacial and terrestrial systems.

Management of Glacier Bay National Park and Preserve

In addition to the national monument proclamations and relevant ANILCA provisions, the management of Glacier Bay National Park and Preserve has been governed by the NPS Organic Act, 16 U.S.C. Section 1, *et seq.* The NPS Organic Act authorizes the Secretary of the Interior to manage national parks and monuments to ''conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' Id. Section 1. This act further directs that ''[t]he authorization of activities shall be construed and the protection, management, and administration of [NPS areas] shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress.'' Id. Section 1a–1. The NPS national general regulations and policies prohibit the commercial extraction of any resources—including fish—for personal profit from areas of the National Park System, absent specific direction to the contrary from Congress. This regulatory prohibition on the commercial extraction of resources from national park areas forms the origins of the longstanding conflict regarding commercial fishing activities in the nonwilderness marine waters of Glacier Bay National Park.

The NPS Organic Act authorizes the Secretary to implement ''rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and reservations under the jurisdiction of the National Park Service.'' Id. Section 3. The Secretary has additional specific authority to ''promulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System, including waters subject to the jurisdiction of the United States * * *.'' Id. Section 1a–2(h).

The designated wilderness areas within Glacier Bay NP, including the marine areas, are additionally governed by the Wilderness Act, Id. section Sec. 1131, *et seq.*, which defines wilderness ''as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain.'' The Wilderness Act requires that wilderness be ''administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness.'' Id. Section 1131(a). Among other things, the Wilderness Act prohibits ''commercial enterprise * * * within any wilderness area * * * except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act * * *'' Id. Section 1133(c).

In addition, Congress recently passed the Omnibus Consolidated and Emergency Supplemental Act for FY1999 (Pub. L. 105–277), signed into law on October 21, 1998. Section 123 of this Act contained a series of compromises that were designed to provide final resolution of the dispute over the appropriateness of commercial fishing in Glacier Bay. Congress subsequently enacted legislation amending section 123 on May 21, 1999 in order to provide further clarification of commercial fishing phase-out and compensation provisions. This rule is designed to implement the various provisions of section 123 of the Act, as amended by section 501 of the 1999 Emergency Supplemental Appropriations Act (Pub. L. 106–31, 113

Stat. 57). The requirements of the Act, as amended, are more fully described in a following section of this rulemaking.

Commercial Fishing History

The marine waters of Glacier Bay National Park have been fished commercially since prior to the establishment of Glacier Bay National Monument. Commercial fishing continued under federal regulation after the national monument's establishment in 1925 and its subsequent enlargement in 1939.

The Act of June 6, 1924, 43 Stat. 464, authorized the Secretary of Commerce to ''set apart and reserve fishing areas in any of the waters of Alaska * * * and within such areas may establish closed seasons during which fishing may be limited or prohibited * * *.'' The first Alaska Fishery Regulations of the Bureau of Fisheries, promulgated between 1937 and 1939, addressed fisheries in an area designated as the Icy Strait district including Glacier Bay National Monument. See 2 FR 359 (February 12, 1937); 4 FR 927 (February 15, 1939). Those regulations, and regulations promulgated by the U.S. Fish and Wildlife Service (FWS) between 1941 and 1959, set allowances for and restrictions on commercial fisheries in areas within the boundaries of Glacier Bay National Monument. See 6 FR 1252 (March 4, 1941), 50 CFR Part 222; 16 FR 2158 (1951), 50 CFR Part 117; 24 FR 2153 (March 19, 1959), 50 CFR Part 115.

Early NPS fishing regulations prohibited any type of fishing ''with nets, seines, traps, or by the use of drugs or explosives, or for merchandise or profit, or in any other way than with hook and line, the rod or line being held in the hand * * *.'' 6 FR 1627 (March 26, 1941), 36 CFR 2.4. However, in conjunction with the aforementioned FWS regulations, the 1941 NPS regulations also stated that ''commercial fishing in the waters of Fort Jefferson and Glacier Bay National Monuments is permitted under special regulations.'' Id. NPS regulations continued to allow commercial fishing in Glacier Bay National Monument through 1966 in accordance with special regulations approved by the Secretary. See 20 FR 618 (1955), 36 CFR 1.4; 27 FR 6281 (July 3, 1962).

In 1966, NPS revised its fishing regulations so as to prohibit commercial fishing activities in Glacier Bay National Monument. Although the 1966 NPS regulations, unlike previous versions, only prohibited fishing ''for merchandise and profit'' in park fresh waters, these same regulations generally prohibited unauthorized commercial activities, including commercial fishing, in all NPS areas. See 31 FR 16653, 16661 (December 29, 1966), 36 CFR Secs. 2.13(j)(2), 5.3. In contrast to earlier NPS regulations, the 1966 regulations did not contain specific authorization for commercial fishing in Glacier Bay National Monument.

The 1978 NPS ''Management Policies'' reiterated that ''[c]ommercial fishing is permitted only where authorized by law.'' Furthermore, in 1978, the Department of the Interior directed FWS to convene an Ad Hoc Fisheries Task Force to review NPS fisheries management. See 45 FR 12304 (February 25, 1980). The task force concluded that the extraction of fish for commercial purposes was a nonconforming use of park resources.

As already noted, in 1980, ANILCA designated Glacier Bay National Monument as Glacier Bay National Park and Preserve, enlarged the area, and designated wilderness that included marine waters within the park. 16 U.S.C. 410hh–1, 1132 note. ANILCA specifically authorized certain park areas where commercial fishing and related activities could continue, including the Dry Bay area of Glacier Bay National Preserve, but not in any area of Glacier Bay National Park. Id. section 410hh–4.

The 1983 revision of the NPS general regulations included the current prohibition on commercial fishing throughout marine and fresh waters within park areas system-wide, unless specifically authorized by law. 48 FR 30252, 30283; 36 CFR 2.3(d)(4). The 1988 version of NPS ''Management Policies,'' still current, reiterates this approach.

However, in the 1980's NPS concluded that some commercial fishing would be tolerated and allowed to continue in Glacier Bay despite National Park Service general policies to the contrary. For example, the 1980, 1983 and 1985 Glacier Bay whale protection regulations implicitly acknowledged commercial fishing operations in Glacier Bay proper. 36 CFR 13.65(b). Also, the park's 1984 General Management Plan stated the following:

> Traditional commercial fishing practices will continue to be allowed throughout most park and preserve waters. However, no new (nontraditional) fishery will be allowed by the National Park Service. Halibut and salmon fishing and crabbing will not be prohibited by the Park Service. Commercial fishing will be prohibited in wilderness waters in accordance with ANILCA and the Wilderness Act.

The General Management Plan defined ''traditional commercial fishing practices'' to include ''trolling, longlining and pot fishing for crab, and seining (Excursion Inlet only) in park waters * * *.'' General Management Plan at p.51. Finally, the 1988 Final Environmental Impact Statement concerning wilderness recommendations for Glacier Bay National Park referred to the continuation of commercial fishing in nonwilderness park waters.

Events Leading to This Rule

The Wilderness Act has prohibited commercial fishing in the wilderness waters within Glacier Bay NP since 1980. Nevertheless, commercial fishing activities were allowed to continue through a policy of non-enforcement by park management in both wilderness and non-wilderness marine waters of the park. Ultimately recognizing the need to conform Glacier Bay management practices with NPS national policies against commercial fishing in the Park System, there have been several attempts since 1990 to resolve this situation through proposed rulemaking, proposed legislation and negotiation.

In 1990, the Alaska Wildlife Alliance and American Wildlands filed a lawsuit challenging the NPS's failure to bar commercial fishing activities from Glacier Bay NP. Alaska Wildlife Alliance v. Jensen, No. A90–0345–CV (D. AK.). In 1994, the U.S. District Court for Alaska concluded that ''there is no statutory ban on commercial fishing in Glacier Bay National Park provided, however, that commercial fishing is prohibited in that portion of Glacier Bay National Park designated as wilderness area.'' The District Courts' decision was affirmed in March 1997 by the United States Court of Appeals for the Ninth Circuit (Alaska Wildlife Alliance v. Jensen, 108 F.3d 1065 (9th Cir. 1997)). Close to the time that the plaintiffs referenced above initiated the litigation, the State of Alaska's Citizens Advisory Commission on Federal Areas hosted a series of public meetings in local communities to discuss the issues. Following these meetings, NPS decided to draft a regulatory approach to resolving the issues.

NPS published its first proposed rule on August 5, 1991 (56 FR 37262). In essence, the 1991 proposed rule would have: (a) Clarified the statutory prohibition on commercial fishing in designated wilderness waters, and (b) phased out commercial fishing in other park waters over a seven year period. NPS held ten public meetings on the proposed rule, received over 300 comments, and drafted a final rule. At the State's request, however, the Department of the Interior refrained

from issuing a final rule in 1993, and instead agreed to discuss with state and Congressional staff the possibility of resolving the issues through a legislative approach.

Between fall 1995 and spring 1996, officials from Glacier Bay National Park and the Alaska Department of Fish and Game (ADFG) co-hosted several meetings in Southeast Alaska involving ''stakeholders'' interested in trying to resolve the commercial fishing controversy. The stakeholders included representatives of the commercial fishing industry; Native groups; and local, regional and national conservation organizations.

The 1997 Proposed Rule

The National Park Service introduced a new proposed rule for commercial fishing on April 16, 1997 (62 FR 18547). The 1997 proposed rule was intended to provide a further opportunity for public participation and discussion—including ongoing efforts with the State of Alaska—toward a comprehensive resolution of commercial fishing issues in the park. NPS also recognized that new regulations would be necessary to exempt any ongoing commercial fisheries from the general NPS regulatory prohibition found at 36 CFR 2.3(d)(4).

This proposed rule varied significantly from the 1991 NPS proposed rule that would have phased out commercial fishing throughout the park after seven years. In general, the 1997 proposed rule: (a) Prohibited all commercial fishing in Glacier Bay proper but provided certain limited exemptions over a fifteen-year phase-out period for fishermen with a qualifying history of participation in four specified fisheries; (b) closed Glacier Bay proper to commercial fishing during the visitor use season; (c) allowed most commercial fisheries in the park's marine waters outside Glacier Bay proper to continue, subject to reexamination at the end of fifteen years; (d) implemented the statutory prohibition on commercial fishing in designated marine wilderness waters; and, (e) contemplated a management regime for those commercial fisheries allowed to continue that would be based upon a cooperatively developed fisheries management plan developed by NPS and the State, implemented through the Alaska Board of Fisheries, and subject to the Secretary of the Interior's authority to protect park resources and values. Moreover, the preamble of the proposed rule offered for public comment ideas for halibut and Dungeness crab studies, a Hoonah Tlingit cultural fishery, and additional protections for Lituya and Dundas bays. The full text of the 1997 proposed rule should be referred to for a complete description of the proposed actions and additional background information.

NPS described several objectives for resolution of commercial fishing issues in the 1997 proposed rule and an accompanying Environmental Assessment (EA) published in April 1998 and discussed later in more detail in this document. These objectives included: preserving habitats and natural population structure and species distribution; allowing natural succession and evolutionary processes to proceed; maintaining biological and genetic diversity; minimizing visitor and vessel-use conflicts; protecting wilderness values; honoring Native cultural ties, and, expanding existing knowledge and understanding of marine ecosystems. NPS also sought to treat individual commercial fishermen fairly, and to develop an effective partnership with the State that would enhance understanding and conservation of fisheries and marine resources within the park.

In October 1997 (62 FR 54409) NPS extended the public comment deadline from October 15th to June 1, 1998 to provide additional opportunity for comment on the proposed rule and pending EA.

From November 1997 to February 1998 NPS sponsored 3 additional full-day public workshops in Juneau, Alaska to continue discussing the issues associated with the park's commercial fisheries. The first of these public workshops was noticed in the **Federal Register** (62 FR 58932, October 31, 1997), while subsequent workshops were publicized in local media. These workshops contributed to the scoping process for the NPS EA.

Scheduled concurrently with the NPS public workshops, the Alaska Department of Fish and Game sponsored 6 public meetings in Juneau from November 1997 to June 1998. This Glacier Bay Work Group, as it was termed, included several representatives of the commercial fishing industry, Native corporations and governments, and local, regional and national conservation groups. The meetings were open to and attended by various members of the public. NPS and DOI representatives attended all of the meetings. The objective of the work group was to reach an overall consensus agreement regarding commercial fishing activities in the park that could be reflected in either regulation or legislation. Considerable progress was made by the work group, under the State's leadership and in a good faith effort by all involved, to address a number of substantive and difficult issues. The group was unable to achieve a consensus agreement at conclusion of its last meeting in June 1998 and collectively agreed to a final effort toward the goal of consensus in October and November—after the close of the summer fishing season. However, action on the part of Congress—by introducing the issue of commercial fishing into the legislative arena and passing the Act in October—interceded and resolved many issues considered by the work group. Notes from each of the State's work group meetings are included in the administrative record of this rulemaking.

The 1998 Environmental Assessment

In April 1998, NPS released a comprehensive Commercial Fishing Environmental Assessment in support of the 1997 proposed rule for Glacier Bay. The EA described the proposed action (the 1997 proposed rule) and four other alternatives for managing commercial fishing activities in the marine waters of the park. Collectively, the EA's five alternatives described a broad range of potential strategies for managing commercial fishing activities in the nonwilderness marine waters of the park. Alternative One described the 1997 proposed rule. Alternative Two was considered the no action alternative because it would implement existing NPS regulations; this alternative described immediate closure of the park to all commercial fisheries. Alternative Three emphasized use of scientific information to protect resident and sensitive fisheries, while allowing harvest of more transitory species moving in and out of the park. Alternative Four described continuation of commercial fishing throughout the park, consistent with sustainability and habitat protection. Finally, Alternative Five described the 1991 proposed rule's seven-year phase-out of all commercial fisheries. Marine wilderness waters in the park were closed to commercial fishing under each of the alternatives, reflecting the Wilderness Act's prohibition on commercial fishing in wilderness waters, and the federal district and appellate court decisions.

Following publication and distribution of the EA in April 1998, NPS held seven public hearings and seven open houses during May in six Southeast Alaska communities (Elfin Cove, Gustavus, Hoonah, Juneau, Pelican, and Sitka) and in Seattle to solicit comment on the EA and proposed rule. On June 1, 1998, NPS extended the public comment deadline for the EA and proposed rule to

November 15, 1998 (63 FR 30162). NPS held additional informal public meetings in Wrangell and Petersburg during September 1998 following requests from residents of those communities.

The FY1999 Omnibus Supplemental Appropriations Act and Amendment

The Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 (Public Law 105–277, 112 Stat. 2681) (''the Act''), was passed by Congress and signed into law on October 21, 1998. Section 123 of the Act contained a variety of specific statutory requirements for the management or phase out of commercial fishing in the marine waters of Glacier Bay National Park. Section 123 of the Act contained the following provisions:

The Secretary of the Interior was directed to cooperate with the State of Alaska 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. This management plan is to provide for the continuation of 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) of section 123. The management plan is also to provide for the protection of park values and purposes, prohibit any new or expanded fisheries, and provide for the opportunity for the study of marine resources.

Section 123 limits commercial fisheries within Glacier Bay proper to ring or pot fishing for Tanner crab, longlining for halibut and trolling for salmon. That section limits participation in these commercial fisheries to the lifetimes of individual fishermen with a qualifying history, but notes that the qualifying criteria are to be determined by the Secretary of the Interior. Certain inlets or areas of inlets of Glacier Bay proper were closed immediately to all commercial fishing, or were limited to winter season king salmon trolling by qualifying fishermen. Section 123 also restated the statutory prohibition on commercial fishing within the park's designated wilderness areas. Last, Section 123 authorized compensation for qualifying Dungeness crab fishermen who had fished in designated wilderness waters of the Beardslee Islands and Dundas Bay.

The congressional managers of this legislation suggested NPS '' 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.'' See H.R.4328 Conf. Rep. No.105–825, p.1213. Subsequently, the public comment period on the 1997 proposed rule and 1998 EA was reopened and extended until February 1, 1999 (63 FR 68666, December 11, 1998; 64 FR 1573, January 11, 1999). The 1,400 persons who had provided comment by December 1998 were mailed a copy of the **Federal Register** extension and invited to provide additional public comment in light of the new legislation. A second **Federal Register** notice (63 FR 68668, December 11, 1998) describing application procedures for the Dungeness crab commercial fishery compensation program authorized by the Act was published and distributed concurrently with the extension of the public comment deadline.

On May 21, 1999 new legislation passed by Congress amending section 123 of the Act was signed into law. This legislation, section 501 of the 1999 Emergency Supplemental Appropriations Act (Pub. L. 106–31), modified the Dungeness crab fishery compensation program and created a new compensation program for fishermen, processors, crewmembers, communities and others adversely affected by restrictions on commercial fishing activities in the park. Twenty-six million dollars were appropriated for compensation programs under section 501; this is in addition to $5,000,000 in compensation Congress had previously appropriated for qualifying Dungeness crab fishermen under section 123 of the 1998 Act. Section 501 also established delayed implementation dates for the non-wilderness closures in Glacier Bay proper relative to ongoing halibut and salmon commercial fisheries in 1999. Finally, section 501 required the Secretary of the Interior to publish this rule, provide a forty-five day public comment period, and then publish a final rule no later than September 30, 1999. The prohibition on commercial fishing in designated wilderness was not affected by the amendments found in section 501.

This rule implements the requirements of section 123, as amended, and establishes eligibility requirements and application procedures for qualifying fishermen to obtain a special use permit for lifetime access to the three commercial fisheries authorized to continue in Glacier Bay proper. Many ideas described in the 1997 proposed rule and the other four alternatives in the 1998 EA were resolved by the section 123 of the Act. Simultaneously with the publication of this rule, NPS intends to accelerate and expand its collaboration with the State of Alaska to develop a fisheries management plan for the park as contemplated by section 123 of the Act.

Analysis of Public Comments

Comment Period

This rule reflects an extensive and lengthy public involvement process that began with the publication of the 1997 proposed rule on April 16, 1997 and ended with the close of the public comment period on the proposed rule and 1998 EA on February 1, 1999. The comment period for the proposed rule was extended four times and the comment period for the EA was extended three times over the course of twenty-one months to insure adequate opportunities for public involvement.

NPS held seven public hearings during the month of May in the previously noted communities. Each public hearing was preceded by a two-hour open house question and answer period. NPS also established an Internet website that allowed the public to access information regarding the proposed rule and the EA, and provide public comment.

The NPS recorded testimony at public hearings from 66 individuals and received 1,557 written public comments. Written comments included surface mail, faxes and electronic mail. NPS staff read all written public comments, reviewed the transcripts of public hearings, and prepared a summary document of substantive comments.

Overview of Public Comment

The majority (75%) of the 66 individuals testifying at the public hearings (6 hearings were held in Southeast Alaskan communities and 1 in Seattle) supported the continuation of commercial fishing in Glacier Bay National Park. The remaining individuals commenting at public hearings supported some form of commercial fishing phase-out. Slightly more than one-third (570) of the written comments indicated support for the NPS's preferred alternative and/or the proposed regulations. A few (25) commenters simply urged NPS to support a fair process to end commercial fishing. One hundred thirty-four individuals supported the preferred alternative and proposed regulations with a shorter phase-out period and 72 individuals wrote in support of a general, non-specific phase-out of

commercial fishing in park waters. A few individuals (14) supported Alternative Five that reflects the 1991 proposed regulations. Many comments were received (136) supporting Alternative Two that would close all fisheries immediately. Eleven percent (177 individuals) of commenters wrote letters that did not identify support for a particular alternative, but expressed general opposition to commercial fishing. Comments that supported reducing or eliminating commercial fishing in park waters indicated that commercial resource extraction is inappropriate in a National Park and expressed concern about potential impacts to the park's unique marine ecosystem and visitor experiences. Many noted that park waters should be managed for scientific study and public enjoyment.

Ninety-seven individuals signed a petition supporting ongoing commercial fishing in park waters. An additional 432 individuals (28%) signed form letters and 132 commenters wrote general letters of support for ongoing commercial fishing. Commenters supporting ongoing commercial fisheries indicated that the fisheries were currently well managed by the State and were not negatively affecting park resources or visitors. Most commenters supporting commercial fishing stated that fishery closures would severely impact fishermen, their families, and local communities in Southeast Alaska.

NPS Response: Congress passed the Act in October 1998, toward the end of what had already been an extended public involvement and comment period on the 1997 proposed rule and 1998 EA. Congress, in passing the Act, resolved a number of issues that had previously been presented for public comment. The new law contained comprehensive statutory requirements regarding management of commercial fisheries in the marine waters of the park. Congress further expanded and clarified the law in the amendment passed on May 21, 1999. This rule largely implements the requirements of the Act, as amended. All public comments have been analyzed, but many of them have been overridden by the enactment of legislation.

General Comments

Numerous commenters expressed surprise that commercial fishing had been occurring in Glacier Bay National Park; most of these individuals indicated that they believed commercial fishing was inappropriate and/or incompatible with the NPS mission as defined in the Organic Act. Many individuals noted that National Parks were ''special places'' where activities should be managed differently than elsewhere. Several commenters noted that commercial ventures of any kind are inappropriate in national parks and several mentioned that National Parks and the resources contained therein belong to all Americans and should not be harvested for private profit. Several commenters noted that most Alaskan waters were open to commercial fishing and recommended that Glacier Bay be set aside as one small closed area. Many commenters indicated that NPS should not allow commercial fishing until there was incontrovertible evidence that such activities would not harm park resources.

On the other hand, NPS received many comments noting that commercial fishing had occurred for more than 100 years in park waters with no evidence of resource or visitor impacts. Several individuals noted that commercial fishing is allowed in other National Parks, so it could be allowed in Glacier Bay. Many individuals felt that other activities taking place in Glacier Bay including cruise ship traffic likely resulted in far more impact than commercial fishing.

Jurisdiction

The State, the Alaska Trollers Association (ATA), the Citizens Advisory Commission on Federal Areas (CACFA), Petersburg Vessel Owners Association (PVOA), and others said that the State rather than NPS holds jurisdiction over the marine waters of Glacier Bay. The State offered that the Submerged Lands Act, the Alaska Statehood Act and the Alaska Constitution all indicated that the State ''owns and therefore manages all water columns, shorelands, tidelands, and submerged lands, including the resources located within or on such lands and waters.'' They further noted, however, that ''the Act overcomes some of our jurisdictional concern'' because it clarifies that NPS may act as provided in the legislation as long as they work directly with the State to address issues.

NPS Response: We acknowledge a legal disagreement with the State of Alaska and others who share the State's view over issues of ownership and jurisdiction with respect to the marine waters of the park. The establishment of Glacier Bay National Monument in 1925, and its 1939 expansion to include the current marine boundaries, predate Alaska statehood by decades. Congress has recognized the park's marine boundaries and waters—and described the Secretary of the Interior's authority and responsibility to manage these marine waters for the purposes of the park—in several federal laws, the most recent example being passage of section 123 of the Act, as amended. Court cases on similar jurisdictional issues in Alaska and elsewhere clearly support the federal view. Importantly, this is the only national park area in Alaska that includes marine waters, and it is the largest marine area included in our National Park System.

We concur with the State of Alaska's conclusion in its comments that the 1998 Act, as amended, should serve to resolve or redress many of the jurisdictional concerns and issues between the federal government and State of Alaska. The Act outlines appropriate roles and authorities for both the federal government and state with respect to management of commercial fisheries in the park. It provides both a requirement and an important opportunity for ongoing cooperation and collaboration between the state and federal government in the implementation of a jointly developed fisheries management plan. We will strive, working together with the State, to provide public opportunity to participate in the development of the fisheries management plan independent of this rulemaking. We believe that the best long-term remedy for jurisdictional issues is an effective state/federal cooperative relationship that outlines and respects individual and collective agency roles and responsibilities, keeps lines of communication open, incorporates opportunities for public involvement in decision making processes, and, ultimately, serves to implement the letter and spirit of the Act, as amended. This is where we intend to devote our energies.

Economic Issues

Many commenters—both those in support of and opposed to ongoing commercial fisheries in Glacier Bay—expressed concern that fishery closures would severely affect numerous individuals and communities. Commenters stated that commercial fishing is the largest employer in Southeast Alaska, that most private sector income in Southeast is derived from the seafood industry, and that the value of fisheries trickles throughout Southeast Alaska and the State. Many commenters mentioned that local fishing villages owe their existence to commercial fishing and depend on raw fish taxes. Commenters opposed to ongoing commercial fishing often cited their concern regarding economic impacts as a reason for recommending a gradual phase-out of commercial fishing. These individuals felt that a

phase-out would allow individuals and communities a transition period, thus reducing economic impacts.

Several commenters said that previous actions or issues were already negatively impacting fishermen's economics (including the IFQ program, low prices for halibut and salmon, state closures of fisheries) and expressed concern that Glacier Bay closures represented an additional economic burden. Many commenters stated that closures would affect not only permit holders but also deckhands, vessel owners, processors and other local business. Several commenters felt that closing Glacier Bay to commercial fishing would devalue fishing permits and IFQ shares.

NPS received numerous comments expressing concern for individual communities and/or businesses or individuals. For example, the cities of Petersburg, Wrangell, Coffman Cove and Pelican wrote comments stating that their communities would be severely impacted by fisheries closures. Individual commenters expressed concern that the community of Pelican could not survive if park waters were closed. One commenter recommended that NPS set up a Glacier Bay Economic Disaster Fund for communities such as Pelican that have a history of raw fish tax revenues from resources harvested in Glacier Bay.

NPS Response: We expect that the Act, as amended, and the ''grandfathering'' eligibility criteria described in this rule, will significantly reduce economic impacts to fishermen, communities, and others associated with the commercial fishing industry in Glacier Bay. Specifically, the Act authorizes existing commercial fisheries to continue in outer waters where well over 80% of the harvest from park waters occur: we support continuation of these locally important commercial fisheries. Additional harvest will continue in most of Glacier Bay proper during the life tenancy period of qualifying fishermen, supporting fishermen and communities for many years to come. Only about 18% of the park's marine waters (wilderness and non-wilderness) will be immediately closed to commercial fishing pursuant to the closure schedules set forth in the Act, as amended; these closed waters have historically accounted for less than 10% of total commercial harvest in the park. Within Southeast Alaska, Glacier Bay proper has historically accounted for only 2–4% of the commercial halibut harvest; approximately 7–12% of commercial Tanner crab harvest; and an indeterminate, but presumably small percentage of the salmon harvest.

We expect that some portion of the revenue previously harvested in the closed areas of the park will be recovered in Icy Strait and/or other Southeast waters: this is particularly likely in the halibut fishery with its individual quota system and eight month fishing season. Some fishermen not meeting the ''grandfather'' eligibility criteria for Glacier Bay proper will be displaced. However, these fishermen presumably have not established a regular or sustained dependence on Glacier Bay fisheries and are already fishing and established elsewhere. Moreover, the various compensation packages outlined in the Act, as amended, should alleviate economic impacts to Dungeness crabbers who commercially fished in designated wilderness as well as others directly and substantially dependent upon various fisheries in Glacier Bay proper.

We recognize that wilderness water closures and eventual phase-out of commercial fishing in Glacier Bay proper—as required by Congress—will have an adverse effect on some individuals and communities. However, it is important to note, as several commenters stated, that other external factors including changes in state regulations, establishment of the IFQ system for halibut, and international market forces have also affected fisheries-related incomes in Southeast Alaska. For example, declining fish tax revenues in recent years in small communities such as Hoonah and Pelican have not been the result of any commercial fishing changes within the park. Congress has appropriated a total of $31,000,000 through the 1998 Act and its 1999 amendment to mitigate economic impacts to fishermen, crewmembers, processors, communities and others adversely affected by restrictions on commercial fishing within Glacier Bay.

The State and the ATA were concerned that NPS has not made economic information compiled by an NPS paid contractor available to the public or included it in the 1998 Environmental Assessment analysis.

NPS Response: Data used in the economic analysis presented in the 1998 EA as well as in the Regulatory Flexibility Analysis described below, came from landing information provided by the State of Alaska Commercial Fishery Entry Commission. We therefore believe that the data is readily available to the public at large. Moreover, by publishing this document as a rule with an additional 45-day public comment period, we will be providing the public with and additional opportunity to review and comment on the economic data associated with this rule.

Regulatory Flexibility Act

Many commenters including the Alaska State Legislature, ATA, PVOA, and the State felt that the certification of ''no significant economic impact'' under the Regulatory Flexibility Act was unfounded, that NPS had inaccurately analyzed the effects of the proposed regulation on small business entities and communities, and that NPS should complete a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act. The State believed that NPS certification of no significant impact was deficient because it did not include an adequate factual basis, did not provide any analysis to support the conclusion, and did not include public input on its assumption and conclusions. The State offered that the findings of this analysis must be made available for public review and comment before proceeding with a final rule.

NPS Response: NPS and the Department of Interior have responded to these comments by completing a Regulatory Flexibility Act analyses of different eligibility criteria under consideration for participation in the three Glacier Bay fisheries authorized by section 123(a)(2) of the Act. Congress, in passing the Act, as amended, resolved various issues about commercial fishing in the park and precluded most decisions by the Secretary of the Interior except the grandfather eligibility criteria. Accordingly, the Regulatory Flexibility Act analysis has focused only on these eligibility criteria. The analysis reviewed the effects of the Department's decision regarding eligibility criteria on the small businesses, organizations and communities in the Glacier Bay area. The analysis is summarized in this preamble.

Grandfather Eligibility Requirements for Continued Fishing in Glacier Bay Proper

NPS received numerous general comments that ongoing fisheries should be limited to those individuals with a ''history'' of fishing in Glacier Bay or ''dependent on'' Glacier Bay fisheries. The Wilderness Society and many individuals wrote in support of the proposed 6 of 10-year eligibility requirements and asked NPS not to relax this requirement. The Wilderness Society further stated that NPS bears the burden of proving that criteria selected will not result in resource impacts during the phase-out period. While NPCA did not specify criteria, they offered that ''two days or several months of fishing in the Bay over a period of a

decade should not be considered adequate for demonstrating historical dependence.'' A few individuals recommended stringent criteria including: only individuals who fished prior to 1990 should be allowed to continue, only individuals with a familial history of 100+ years of fishing should be allowed to continue, and only individuals older than 50 years should be allowed to continue. One commenter felt that fishing six years was not a serious enough commitment to be entitled to continue fishing.

Conversely, numerous other commenters recommended more liberal eligibility criteria. The State, ATA and numerous individuals supported criteria that would allow any individual holding a Commercial Entry Permit (including T series, B series, S05, S15, and K series permits) with a history of fishing the waters of Glacier Bay to continue. A few individuals supported criteria that would allow any fishermen with a permit for a fishery that occurs in the Bay to fish there. Several individuals suggested that NPS use fishermen's catch history (percentage of landings) from Glacier Bay rather than number of years as a base for eligibility criteria. Several commenters believed that NPS should use different criteria for different fisheries. One commenter recommended that 3 of 5 years be used to determine eligibility for the Tanner crab fishery because this fishery had only recently become commercially valuable. Several individuals commented that their children and grandchildren should be eligible to continue fishing. One commenter recommended that grandfather rights should be 100% transferable with no expiration date, but NPS should be able to buy this right as well as the associated limited entry permit.

Many commenters felt that stringent criteria (including the proposed 6/10 years) would be unfair and difficult to implement. Individuals stated that fishermen typically ''lumped'' fish landings on a fish ticket, reporting landing locations based on where they caught most fish on a given trip. In these cases, fish tickets would not necessarily reflect fishing effort in Glacier Bay. One commenter indicated that fish ticket information was frequently changed by the processor and was therefore not accurate. Several individuals were concerned that the 6 of 10-year criteria would eliminate many young fishermen who often have very limited experience fishing elsewhere and large investments to support. A few individuals said that some fisheries were closed during the 10-year period being considered, so perhaps no fishermen could qualify for those fisheries. A few individuals felt that strict criteria would displace many fishermen out of Glacier Bay proper, resulting in crowding in Icy Strait which could effect both commercial and recreational catch there. One commenter said that stringent criteria would lower the number of fishermen qualifying resulting in a ''bonanza'' for remaining fishermen. One commenter stated that the proposed criteria would reward individuals who reported landings for 2 permit holders on a given boat (typical when a crewmember wishes to qualify for an upcoming limited entry fishery and must report landings to do so).

Commenters indicated that lenient criteria would not increase fishing pressure on Glacier Bay because individual fishermen have typical fishing locations and would be unlikely to shift into the Bay if they had not fished there previously. One commenter felt that the number of permits reporting landings in the park had remained stable in past years and would not be expected to increase in the future.

Many individuals stated that the criteria did not address the needs of crewmembers or individuals that leased vessels to permit holders. A few individuals said that crew (in particular family members) invested considerable time in learning how to fish a particular location assuming they would ''inherit'' that location in the future. One commenter stated that he often obtained crew jobs because of his knowledge of Glacier Bay and noted that he would not have that opportunity if the fishing fleet were reduced. One commenter stated that he would not meet strict eligibility criteria because he had been leasing a permit. One commenter offered that other limited entry processes have considered the number of years as a crewmember, boat owner or gear owner in determining eligibility for a particular fishery.

A few commenters, including the Petersburg Vessel Owners Association, felt that NPS should determine how many fishermen and/or how much harvest was acceptable and then set criteria for eligibility rather than letting these numbers be a ''fallout'' from the criteria. One commenter recommended that NPS use ''good standing'', as a means of determining eligibility by allowing only those individuals whom had never been cited for resource or permit violations. Another commenter recommended that continued eligibility should depend on continued compliance with Glacier Bay and state regulations. The State commented that eligible fishermen should be able to continue using the vessel and crew of the permittee's choice.

NPS Response: Section 123(a)(2) of the Act authorizes the Secretary of the Interior to establish eligibility criteria to determine which fishermen will be issued a non-transferable lifetime access permit to continue to fish in those waters of Glacier Bay proper which were left open for grandfathered commercial fishing under the Act. The Secretary of the Interior has now selected eligibility criteria intended to allow those fishermen with a sufficient reoccurring history of participation in the authorized Glacier Bay fisheries to continue fishing for their lifetimes. The 1997 NPS proposed regulations outlined criteria that would have permitted only those individuals who had fished 6 of the last 10 years in Glacier Bay proper to continue fishing. However, based on public comment and the Regulatory Flexibility Analysis, we believe that the criteria described in the 1997 proposed rule would have adversely affected the economic well being of an unacceptably high number of fishermen as well as local communities.

This rule would allow continued access to Glacier Bay proper to those fishermen who have fished in Glacier Bay proper in one of the three authorized commercial fisheries as follows: For the halibut fishery, 2 years of participation would be required in Glacier Bay proper during the 7-year period, 1992–1998. For the salmon and Tanner crab fisheries, 3 years of participation would be required in Glacier Bay proper during the 10-year period, 1989–1998. The 7-year qualifying period—as further explained below—for halibut is based, in large part, on the establishment of a unique statistical sub-area for Glacier Bay proper in 1992. Use of this qualifying period will assist fishermen in documenting a history of fishing within Glacier Bay proper. A 10-year qualifying period is used for the Tanner crab and salmon fisheries. These longer qualifying periods (of 7 and 10 years, respectively) are intended to provide a better opportunity for fishermen with a variable but reoccurring history of participation in these fisheries in Glacier Bay proper to qualify for the lifetime access permits. Essentially, these criteria require fishermen to have fished in Glacier Bay proper for approximately 30% of the years during the 7 and 10-year base periods to qualify for continued lifetime access to an authorized fishery. We believe that these criteria reflect a reasonable and balanced approach on appropriate eligibility criteria for lifetime access to the authorized Glacier Bay proper commercial fisheries.

A base period of less than 7 to 10-years was considered too short in duration and would not, at least in the case of the Pacific halibut fishery, allow for recent and dynamic changes in the character of the fisheries. We did not consider longer qualifying periods because participation in the three authorized fisheries has only recently stabilized. These fisheries have all become limited entry fisheries in recent times; fewer permit transfers have occurred in recent years. Recent permit holders are most likely to still be fishing and have a current economic reliance on a Glacier Bay proper fishery.

The 2 out of 7-year criteria for the Pacific halibut fishery takes into consideration a recent change in statistical area configuration—the 1992 creation of a separate regulatory sub-area (184) specific to Glacier Bay proper—and allows fishermen to more accurately document their participation in the fishery within Glacier Bay. Before 1992, Glacier Bay was part of regulatory area 182, a larger reporting area combined with Icy Strait. Therefore, it would be difficult for fishermen to document commercial halibut harvest from Glacier Bay proper prior to 1992. This 7-year qualifying period accommodates changes in the commercial halibut fishery since 1995 when it became a limited entry fishery and the entire nature of the fishery changed with prolonged seasons and Individual Fishing Quotas.

The 3 out of 10-year criteria for the Tanner crab fishery accommodates the recent increase in participation in this fishery within Glacier Bay proper from fewer than 10 vessels per year from 1984–1989, to 14–25 vessels per year since 1991. The Tanner crab pot fishery became a limited entry fishery during the latter part of the 1980s.

The troll fishery for salmon in Glacier Bay proper is almost exclusively focused on king salmon during the winter commercial fishing season. Because there is no way to separate out Glacier Bay proper harvest from that occurring elsewhere within District 114, we will consider salmon landing reports from District 114 as indirect evidence of participation in the fishery within Glacier Bay proper, provided it is supported by additional corroborating documentation in making application for a lifetime access to the salmon troll fishery in Glacier Bay proper.

The qualifying periods described in this rule are considerably longer than those typically used by the State of Alaska when establishing a limited entry fishery. For example, the Alaska Commercial Fisheries Entry Commission used preceding 5-year periods in recently establishing limited entry permit fisheries in Southeast Alaska for Dungeness crab and pot fished shrimp. Under Alaska State law, applicants for these limited entry fisheries were ranked and awarded permits according to their participation and economic dependence on the fisheries over the 5-year qualifying period. We decided in favor of longer qualifying periods in interest of minimizing economic impacts to fishermen who have participated in the authorized fisheries in Glacier Bay proper. However, like the State of Alaska, we would require recent and multiple years of participation in a given fishery. We do not believe that a single occurrence of commercial fishing within Glacier Bay proper over the past 7 or 10-years demonstrates a sufficient sustained dependency on those park waters to warrant grandfathering such fishermen in for lifetime permits.

A special use permit will be required to participate in any of the three Glacier Bay fisheries beginning in calendar year 2000. The procedures for applying for and obtaining a special use permit, as well as the eligibility criteria, are described in this rule. Fishermen meeting the eligibility criteria may apply for a special use permit so long as they hold a valid permit for the fishery. The special use permit will be renewed on a 5-year cycle for the life time of each fisherman who continues to hold the necessary license for a Glacier Bay fishery, and is otherwise eligible to participate in the fishery. The special use permits are non-transferable under the Act. However, NPS may consider an emergency transfer of a permit in the event or temporary illness or disability, as otherwise authorized by the Commercial Fisheries Entry Commission. These are hardships of an unexpected and unforeseen nature, and a permit transfer would be limited to 1-year in duration.

The Act is specific to permit holders and does not provide for individuals who own and lease vessels to Glacier Bay fishermen, or for crewmembers. While these individuals do not qualify, under the law, to receive a special use permit to fish in Glacier Bay, nothing in the Act affects the ability of a special use permit holder to continue to lease the vessel or hire the crew of their choice.

Documentation of Eligibility

Many commenters felt that fishermen should supply ''evidence'' or ''definite proof'' of fishing history, but only a few commenters addressed specifically what NPS should accept in terms of documentation of fishing history. One commenter indicated that the documentation process discussed in the proposed rule was ''too easy.'' Another commenter indicated that evidence of historic fishing should include official ADFG landing tickets, ATA logbook data, ship's log data and a valid ADFG license. A few commenters, including the State, indicated that an affidavit of catch history should be sufficient. The State also recommended that NPS design a validity review and appeals program consistent with due process. Several individuals were concerned that documenting past fishing effort in Glacier Bay would be quite difficult because ADFG statistical areas do not match park boundaries and because fish tickets reflect only the area where the majority of a landing was harvested. ATA and the State felt that requiring documentation beyond an affidavit would be time consuming and expensive for both agencies and fishermen and would reduce the number of eligible fishermen.

NPS Response: The Act requires individuals to establish their eligibility to participate in one or more of the three authorized Glacier Bay commercial fisheries. This rule would require that an individual hold a valid commercial fishing permit for the fishery in Glacier Bay, provide a sworn and notarized affidavit attesting to their history and participation in the fishery within Glacier Bay proper, and provide other available documentation that would assist in corroborating their participation in the fishery in Glacier Bay during qualifying years. We are requiring applicants to provide two types of corroborating documentation readily available from the State of Alaska: permit histories and landing reports. The permit history documents an individual's years as a permit holder in a fishery, and the landing report documents years and reported harvest locations for fishery landings by an individual. This required corroborating documentation—copy of a valid permit or license, affidavit, permit history, landing report—is less than that typically required by the State of Alaska or National Marine Fisheries Service (halibut) for similar limited entry programs. We encourage any other forms of corroborating documentation—for example, vessel logbook data or affidavits from other fishermen or processors—that can assist in establishing an applicant's history of participation in the fishery.

We recognize the limitations of landing report data based on fish tickets. Although Alaska statute requires accurate reporting of fish harvest information by statistical area,

fishermen often lump catches from Glacier Bay and Icy Strait statistical areas, reporting them as Icy Strait landings on fish tickets. Moreover, no statistical reporting area exists specific to Glacier Bay for salmon. Because of this, for the salmon fishery we will consider landing reports from District 114—along with other corroborating documentation (this could be affidavits from crewmembers, other fishermen, processors, log books, etc) provided—as indirect evidence of participation in the fishery in Glacier Bay proper. Because both the halibut fishery (regulatory subarea 184) and the Tanner crab fishery (statistical areas 114–70—114–77) do have reporting areas specific to Glacier Bay, we intend to require some form of additional corroborating documentation beyond the personal affidavit (see suggestions above for the salmon fishery) where landing data for these fisheries are inconclusive. In any event, landing reports must be from the reporting area immediately adjacent to Glacier Bay before they will be considered. In the case of halibut, this is regulatory subarea 182; in the case of Tanner crab, this is statistical area 114–23. These approaches are intended to address concerns regarding the difficulty of attributing harvest to Glacier Bay proper from landing reports, most particularly for the salmon troll fishery.

We intend to work closely with the Alaska Commercial Fisheries Entry Commission, the National Marine Fisheries Service and other knowledgeable sources to notify and identify permit owners who meet the eligibility criteria defined for the Glacier Bay commercial fisheries.

Management Process for Ongoing Fisheries

The State, the CACFA, the Alaska State Chamber of Commerce, the PVOA, the ATA and others requested that NPS clarify particular aspects of the Act. In particular, commenters asked NPS to clarify that ongoing fisheries would be managed by ADFG through the Alaska Board of Fisheries process. They asked for further clarification that NPS's role in joint management would be to contribute expertise in defining and protecting park purposes and values. The State requested that NPS develop specific criteria for the Secretary to use in recommending actions associated with ongoing fisheries. The State also suggested that subsequent rulemaking recognize the authority of the International Halibut Commission, National Marine Fisheries Service, North Pacific Fisheries Management Council, and the Salmon treaty with Canada in managing ongoing fisheries.

The State indicated that an existing Master Memorandum of Understanding between NPS and ADFG commits the NPS ''to utilize the State's regulatory process to the maximum extent allowed by federal law in developing new or modifying existing federal regulations or proposing changes in existing state regulations governing or affecting the taking of fish and wildlife on Service lands in Alaska'' and requested that NPS reference this MMOU in subsequent rulemaking. They further requested that a written finding be prepared if state regulations appear to conflict with federal law.

NPS Response: The scope and nature of the cooperative fisheries management program for Glacier Bay is beyond the subject matter of this rulemaking. Nevertheless, a few brief comments on the NPS/State cooperatively developed management program are in order. We have already begun collaborative discussions with the State of Alaska regarding the fisheries management program authorized under section 123(a)(1) of the Act. We recognize the fisheries management expertise of the State and the effectiveness of the established regulatory and public involvement process of the Alaska Board of Fisheries. We believe that the spirit and intent of the Act—indeed, its balance—envisions a cooperatively developed fisheries management plan and process that is respectful of and maintains the state and federal governments' traditional management roles. We expect the State to continue its role in the day to day management of the authorized commercial fisheries in the park, and that any changes to state managed fisheries will be implemented through the Alaska Board of Fisheries. We support the State's role and regulatory processes. We view the fisheries management plan as the primary vehicle for interagency and public agreement on fisheries management and research objectives in the park. As the planning and management processes are now envisioned, the State would contribute expertise in management of commercial fisheries and NPS will contribute expertise in park management, purposes and values. State and federal agencies, along with input from interested parties, could jointly develop appropriate marine research and assessment programs to improve understanding and management of park fisheries and the marine environment. Ultimately, the Secretary retains the authority and responsibility to protect park resources and values, especially with regards to new or expanded fisheries. Halibut fisheries in the park are managed by the International Pacific Halibut Commission under international treaty and may require separate cooperative planning and research efforts.

Cooperative Development of Fisheries Management Plan

Many commenters supported the cooperative development of a fisheries management plan. The Wilderness Society requested that NPS prepare an EIS as part of this planning process and ensure that the plan was in compliance with ANILCA and other applicable laws and compatible with park values and purposes. NPCA and numerous other commenters expressed general support for the joint management concept; NPCA recommended that the plan be produced with public involvement and suggested that an advisory committee representing various stakeholders guide the process. The State and others stated that ''cooperative development of a management plan'' was not synonymous with cooperative management. These commenters reiterated that ongoing fisheries should be managed using the existing state process rather than a cumbersome ''dual management'' process implied by co-management.

One commenter felt that joint management would be difficult because NPS and ADFG biologists would not have similar escapement goals and might disagree about research needed. One commenter suggested that NPS fund an ADFG position because managing Glacier Bay fisheries would be expensive and it is unfair to use license fees for this management. The State requested that subsequent rulemaking clarify that the Alaska-specific provisions under 36 CFR part 13 and 43 CFR part 36 supercede the closure provisions in 36 CFR part 2.

NPS Response: We will work with the State of Alaska in developing a fisheries management plan for the park. The plan must be consistent with the requirements of the Act and all other applicable federal and state laws. We expect the State and NPS will continue their respective management roles, and do not foresee a duplicative management structure.

Our general goals in the development of the fisheries management plan are to insure that fisheries subject to harvest are prudently managed, and that park areas and fish populations not subject to commercial harvest are protected. We will also work to insure that ongoing fisheries are managed in context with the park's purposes and values. And we will work to optimize opportunities for research and monitoring programs that

can improve understanding, management and conservation of fisheries and the marine system.

We acknowledge the potential merits of creating an advisory committee comprised of a balanced representation of local, state and national interests that could assist in development of a fisheries management plan. The concept of an advisory committee warrants further discussion with the State, but is beyond the scope of this rule.

Additional Closures

Numerous commenters, including the Sierra Club recommended that commercial fishing be phased out of the park's outer fjords including the non-wilderness portion of Dundas Bay and the complex of small fjords from Cape Spencer to Lituya Bay. The State, the CACFA, the Alaska State Chamber of Commerce, the PVOA, and the ATA believe that the Act did not authorize any additional seasonal or area restrictions or closures including the closures of Lituya and Dundas bays or the closure of areas for research projects.

NPS Response: This rule does not implement any additional closures or address restrictions on commercial fisheries beyond those imposed by Congress in passing the Act, as amended. We do not anticipate any additional closures or restrictions specific to commercial fishing in the outer waters of the park (outside Glacier Bay proper) at this point unless those restrictions or closures emerged through the normal course of events in the State's fisheries management administrative process.

15-Year Review for Outer Waters

Several commenters stated that the Act did not allow for a 15-year review of outer water fisheries and requested that this language be omitted from future rulemaking language.

NPS Response: We agree that the Act does not provide for a 15-year review of outer water fisheries. We do expect that ongoing fisheries will be routinely reviewed to determine whether fisheries management objectives are being met. This routine review should serve to resolve any issues or concerns that arise regarding the fisheries. Reference to a 15-year review, therefore, has been deleted from this rule.

New or Expanding Fisheries

A few commenters including the ATA expressed concern about NPS's definition of ''new or expanding fisheries.'' Commenters felt that fisheries that have been closed for conservation reasons should not be considered ''expanding fisheries'' if they could be sustained in the future. ATA also indicated that this definition must not limit the number of boats or harvest levels permitted in a given area. One commenter offered that this definition must not include increased troll effort as it is unclear what past troll effort has been. The City of Pelican commented that recent changes in the groundfish fishery might result in reallocation or expansion of this fishery in Southeast Alaska and indicated that this quota should be allowed to be harvested. The State recommended that NPS avoid defining key fishery management guidelines in subsequent rulemaking such as the prohibition on ''new or expanded fisheries'' prior to working with the State. The State and ATA indicated that new and expanded fisheries are already limited under existing mechanisms and that NPS should defer to the Alaska Board of Fisheries ''Management Plan for High Impact Expanding Fisheries.''

NPS Response: Issues associated with the prohibition in the Act on ''any new or expanded fisheries'' are largely beyond the scope of this rule and will be addressed in the State/Federal park fisheries management plan to be collaboratively developed with public input.

Commercially Viable Fisheries

ATA and the State objected to NPS's use of the term ''commercially viable'' for determining which fisheries would continue in park waters and requested that future rulemaking omit reference to continuation of these fisheries. ATA indicated that even small, seemingly unprofitable fisheries might be important to individuals who rely on diversification in several fisheries.

NPS Response: These issues are beyond the scope of this rule and will be addressed in the subsequent State/Federal fisheries management plan for the park.

Permit and/or License Requirements

ATA and the State opposed any permit or license system for ongoing fisheries in outer waters beyond those already implemented by the State, NMFS, or IPHC.

NPS Response: We do not intend to implement a permit requirement for participation in commercial fisheries outside Glacier Bay, nor is one described in this rule. We do recognize a general need to obtain better harvest and effort data for fisheries in the park, but believe that there are other actions that should be fully explored in cooperation with fishermen and the State to obtain this data.

Procedure

Public Hearings

Commenters raised several procedural concerns. Several commenters at public hearings felt that the hearings were not well advertised and that they took place during the commercial fishing season, which limited participation by fishermen. These individuals recommended that NPS hold additional public hearings in the fall. One commenter stated that the release of the EA and the hearing schedule conflicted with fishing season and would reduce the number of fishermen able to attend hearings and/or comment in writing.

Two commenters requested in writing that additional public hearings be held in Port Alexander, Angoon, Petersburg, Wrangell, Craig and Ketchikan. Several individuals phoned in requests for public hearings in Wrangell and Petersburg.

NPS Response: We advertised the local hearings extensively via news releases, public announcements on local radio stations, and flyers posted in local communities. Attendance at the seven hearings and two informal public information meetings was typical of, or greater than, attendance at most NPS hearings. Importantly, because of the many recent public workshops and working group meetings coordinated by the State and NPS, much local attention focused on this issue. We believe that most individuals in Southeast communities were aware that proposed regulations regarding commercial fishing had been published. The public comment period was repeatedly extended over the course of twenty-one months and provided significant opportunities for public input.

We scheduled and held public hearings in 6 Southeast Alaskan communities and Seattle and held informal public information meetings upon request in Petersburg and Wrangell. NPS staff heard testimony at the formal hearings from 66 individuals and heard informal comments from many more individuals during informal open houses in these communities as well as at informal public meetings in Petersburg and Wrangell. NPS also received, and reviewed 1,557 written comments that expressed diverse views regarding the commercial fishing issue. We believe that this extensive public input is representative of the various interests and views regarding the issue of commercial fishing in the park.

Rulemaking and NEPA Process

Many commenters including the State, the Southeast Conference, the State Chamber of Commerce, the Pacific

States Marine Fisheries Commission, The CACFA, the State Legislature, Representative Gail Phillips, and the cities of Petersburg and Pelican, requested that NPS terminate the rulemaking effort and reissue a proposed rule that reflected the changes rendered by the Act and clarifies how NPS intends to proceed with implementation of the Act. The CACFA felt that NPS has a responsibility under the Administrative Procedures Act to first publish a proposed regulation and provide the public the opportunity to comment. The CACFA also felt that the 60-day extension period for public comment was ineffective because it took 51 days from the date the Act was signed until NPS issued the notice to reopen the comment period.

NPS Response: Prior to Congress passing the Act in October 1998, the NPS public comment deadline on the EA and proposed rule was scheduled to run until November 15, 1998. Upon passage of the Act, the congressional managers of the legislation directed the NPS to ''extend the public comment period on the pending regulations until January 15, 1999, modify the draft regulations to conform to [the Act's] language and publish the changes in the final regulations.'' Accordingly, we extended the public comment period until February 1 and mailed notice to the 1,400 individuals who had provided comment by December 1998. We responded by letter in December and January to the State of Alaska and the several others who requested a new rulemaking process following passage of the Act. These responses articulated yet other reasons why we were not then pursuing a new proposed rule to implement the Act, including the view that the Act was within the range of actions addressed and analyzed in the EA, and a concern about negating the efforts and ideas of the many individuals who had provided public comment to date.

Notwithstanding the above history, after the close of the public comment period on February 1, 1999, Congress again enacted further directions and clarification language for management of commercial fishing activities within Glacier Bay National Park (section 501 of Pub. L. 106–31, May 21, 1999). Section 501 amended the October 1998 Act and required the Secretary of the Interior to publish an interim final rule without an effective date and a forty-five day public comment period. This rule responds to congressional requirements and the requests from the State of Alaska, fishermen, the Small Business Administration, and others for a new rule describing the Act, as amended. It also provides a Regulatory Flexibility Act analysis of eligibility criteria for the Glacier Bay lifetime access permits. We welcome additional public comments on all aspects of this rule.

These commenters also felt that the EA should be redrafted because it does not reflect the current statutory regime, is based on the previously proposed rule, and does not accurately analyze the environmental and socio-economic effects of the alternatives. One commenter believed that the impacts of the Act were not covered in the EA. Moreover, these commenters suggested that the redrafted document should be prepared as a full Environmental Impact Statement (EIS).

NPS Response: The Council on Environmental Quality regulations, which describe requirements for implementing the National Environmental Policy Act (40 CFR Parts 1500–1508), indicate that a federal agency will determine whether an EIS must initially be prepared based on agency-specific supplemental procedures. NPS staff reviewed agency-specific procedures and determined that an EIS was not initially required, as the effects of the proposed alternatives were not known to result in significant impacts upon the quality of the human environment. As a result, we proceeded with the preparation of an Environmental Assessment (EA). Had the EA analysis determined that the proposed action would result in a significant effect, a full EIS would have been prepared.

Because the published EA included a broad range of alternatives, including an alternative in which all fisheries would continue and an alternative in which no fisheries would continue, the agency has essentially reviewed and displayed the effects of the full range of eligibility criteria. Any decisions regarding eligibility requirements were fully analyzed and are within the scope of the existing Environmental Assessment. We have developed an errata sheet to amend the EA based on past public comment and solicit public comment on the errata sheet as well as on the rule.

Several commenters noted that the proposed rule and the EA falsely outlined the required ''No Action'' alternative as immediate closure of all fisheries.

NPS Response: We recognize that the designation of the No Action alternative as an alternative that involved immediate closure of all park waters to fishing was confusing to the public because No Action alternatives typically reflect the status quo, which—from a fisherman's viewpoint—would be the continuation of commercial fishing throughout the park's marine waters. However, the No Action alternative—required in all EA or EIS processes—actually requires description and analysis of what would occur under the existing ''status quo'' of federal laws and regulations. This meant that the ''No Action'' alternative—given the existing NPS general regulatory prohibition on commercial fishing in the park and the statutory prohibition on commercial fishing in designated wilderness areas—actually described closure of all of the park's marine waters to commercial fishing. In any event, Congress has now twice enacted legislation since the original EA was prepared which further clarified the status of various fisheries in Glacier Bay National Park as a matter of federal statutory law.

Resource Issues

Almost all comments received in support of reducing or eliminating commercial fishing in park waters cited natural resource concerns. Numerous commenters indicated that the NPS is charged with maintaining naturally functioning ecosystems and should not allow commercial fishing because the agency has not proven that such activities do not harm park values. Commenters felt that commercial fishing could result in depletion of fish stocks with concurrent food web effects that might impact other parts of the marine ecosystem. Several individuals commented that commercial fishing activities might alter natural population dynamics even if stocks remained healthy. Numerous individuals cited examples of the effects of overfishing elsewhere in the United States and expressed concern that overharvests could occur in Glacier Bay. A number of commenters indicated that NPS should not allow specific fisheries such as purse seining or scallop dredging. Other resource concerns expressed included potential bycatch effects, water pollution, marine mammal and gear entanglement, vessel-related impacts to the marine system, or impacts to specific species (harbor seals, sea otters, common murre, Kittlitz murrelet, glacier bear, tufted puffin).

On the other hand, almost all comments received from individuals in support of ongoing fisheries indicated that there was no evidence that commercial fisheries resulted in long-term biological harm. These individuals stated that park fisheries have been sustained for over 100 years with no observable biological harm.

NPS Response: We acknowledge the State's expertise and experience in managing fisheries in Southeast Alaska, as well as the strong conservation ethic

of Alaskan fishermen. The State is charged with managing fisheries to maintain sustainable yield. The NPS must manage its lands and waters in a manner that leaves all resources unimpaired. Both of these management approaches are embraced by the Act, as amended, which essentially allows commercial fisheries to continue under the management regime of the State in the outer waters of the park, while establishing a more protective fisheries management regime within Glacier Bay proper.

Many individuals felt that the resource impacts of other commercial ventures (i.e., cruise ships, other tourist operations) in Glacier Bay were likely far greater than commercial fishing impacts. A few individuals believed that logging and mining are precluded from National Parks because they do impact resources while commercial fishing does not.

NPS Response: We analyzed the potential effects of vessel traffic, both commercial and personal, in the 1996 Vessel Management Environmental Assessment and Plan. Based on this assessment, we outlined strict vessel quotas, defined vessel operating conditions, and developed mitigation measures designed to ensure that park resources are not impaired by vessel traffic. Importantly, the NPS has a dual mandate to protect park resources while providing visitors the opportunity to see and learn about parks. Vessel access is the primary means by which the public visits Glacier Bay National Park. In general, commercial ventures associated with providing visitor services—such as cruise ship and tour boat operations and kayak concessions in Glacier Bay—are permitted in national parks, while other commercial ventures—in particular, those that remove resources from park areas for profit—are deemed inappropriate.

Several commenters noted that most of the fish species harvested in Glacier Bay were migratory (salmon, halibut, lingcod) and consequently were not ''park resources''; a few commenters indicated that 98% of the salmon caught in Glacier Bay were hatchery raised fish and were not park resources.

NPS Response: Salmon, halibut and lingcod have been documented to range widely and may move in and out of park waters throughout their life span. However, National Parks consider fish and wildlife species to be park resources during their period of residence within park boundaries and manage them as such, regardless of their place of origin or primary area of residency. We do not believe that there are definitive research results available regarding the percentage of hatchery-raised fish using—or caught in—park waters. We have found no data to verify the claim that 98% of salmon caught in Glacier Bay are hatchery-raised; this figure appears to be a misinterpretation of coded wire tag data collected by ADFG. In any event, Congress has resolved the debate over whether salmon should be considered ''park resources'' by passing the Act, as amended, and assigning the Secretary of the Interior/NPS the responsibility of developing grandfather criteria for lifetime fishing permits in Glacier Bay proper and enforcing a winter king salmon trolling season as well.

Cultural Issues

Many commenters, both Native and non-Native, expressed concern about how the proposed regulations would affect Native fishing activities in park waters. Many commenters, including NPCA supported some form of ongoing Native fisheries including commercial, subsistence, and an undefined ''Native fishery.'' These individuals cited several reasons for supporting ongoing Native fishing including: it is a basic Native right; the Tlingit people have harvested fish with limited impact to the environment; and it is important to preserve cultural traditions, maintain the economic viability of Native villages, and continue Native people's connection to resources.

Several commenters remarked that commercial fishing and subsistence activities were tightly linked for Native peoples. These individuals felt that reducing opportunities for commercial fishing would reduce subsistence products available in Tlingit households. One commenter noted that Tlingit traditional fishing is protected by treaty. One commenter indicated that wilderness water closures eliminated access to waters traditionally used by the Hoonah hand-trolling fleet. A few individuals commented that they did not support ongoing Native fisheries because all people must learn to adapt to change. One commenter thought that fishery closures would protect the Tlingit homeland and therefore protect Native culture.

The State expressed concern that Tlingit historical activities are being ignored and that the residents of other local communities have a cultural and historical dependence upon the Glacier Bay area. They further indicated that NPS's intention with regard to the proposed cultural fishery is unclear.

NPS Response: This issue is generally beyond the scope of this rulemaking which concerns implementation of congressional requirements for commercial fishing activities within the park and the development of appropriate criteria for lifetime nontransferable fishing permits for Glacier Bay proper. That said, we recognize that the Tlingit people have fished the waters of Glacier Bay and Icy Strait for many generations and are intimately connected to both the fish resources and the park itself. Similarly, for over a century, non-Native peoples of Southeast Alaska have come to rely on the waters of the park for sustenance. We recognize that the park represents more than just an economic resource for these groups—it is a place of cultural identity. The Act provisions that authorize lifetime tenancy and continued fishing in outer waters will, to some extent, preserve both Native and non-Native cultural ties to most of Glacier Bay National Park. Moreover, nothing in these regulations or the Act preclude fishermen from participating in other authorized activities including sport or personal use fisheries, or visiting and enjoying the park for other reasons.

We cannot legally provide differential commercial fishing opportunities for Natives and/or local peoples and The Alaska National Interest Lands Conservation Act (ANILCA) does not authorize Title VIII subsistence activities in Glacier Bay National Park.

However, we signed a Memorandum of Understanding with the Hoonah Indian Association (HIA), the federally recognized tribal government, in 1995 which commits NPS and HIA to work together on numerous issues of mutual concern regarding Glacier Bay National Park. We have initiated several ongoing projects and programs designed to maintain and strengthen Tlingit cultural ties to Glacier Bay and to perpetuate important cultural traditions. As part of this effort, we intend to pursue the development of a cultural fishery for the local Tlingit community in cooperation with the HIA and the State. This cultural fishery will allow the Tlingit people to maintain a cultural tradition established by their ancestors that they can pass on to future generations.

Visitor Issues

Many commenters expressed concern that commercial fishing activity, including vessel disturbance and potential ecosystem changes, could affect visitors' experience of Glacier Bay. Many of these individuals felt that commercial fishing vessels destroyed the solitude and serenity of park waters. Several past visitors cited specific instances of having been disturbed by commercial fishing vessels or gear.

On the other hand, many individuals in support of commercial fishing indicated that park visitors enjoyed seeing and learning about commercial fishing. These commenters cited specific examples of passengers on tour boats and cruise ships photographing commercial fishing vessels. Two kayak concessionaires in the park indicated that they had never received complaints from their clients about commercial fishing in park waters. Several commenters explained that many of the fisheries took place during a time period when few visitors were present (i.e., Tanner crab season in February) or in areas where few visitors were present (i.e., the outer coast). Several commenters felt that the presence of commercial fishing vessels enhanced visitor safety for boaters, kayakers, and airplane passengers. One commenter expressed concern that trolling activities were a navigational hazard, particularly in Glacier Bay. One commenter felt that commercial fishing was, in and of itself, a valid way to visit the park. Many commenters described their commercial fishing trips in Glacier Bay as an experience beyond simple economic gain.

NPS Response: We recognize that park visitor opinion on commercial fishing, as with most issues, differs. For some park visitors, seeing and learning about commercial fishing is an important part of their experience in Glacier Bay. Others wish to have park experiences less influenced by human contact. The Act, as amended, attempts to balance this spectrum of visitor interests by authorizing ongoing fisheries in the park's outer waters while designating certain areas—including five wilderness water areas, and in Glacier Bay proper, the upper west arm, the upper east arm, and Geikie Inlet—as closed to commercial fishing. Some of these areas are already closed to motorized traffic under the park's 1996 Vessel Management Plan regulations. Congress also set in motion a process for limiting and phasing out commercial fishing in the rest of Glacier Bay proper through the use of grandfathered nontransferable lifetime permits to qualified fishermen in the three authorized commercial fisheries. We believe that this mixture of closed and open areas will provide diverse visitor experience opportunities; we anticipate few if any new visitor concerns regarding commercial fishing in Glacier Bay under this rule.

Marine Reserve

Numerous individuals supported the concept of providing a marine reserve in Glacier Bay where commercial fishing would be prohibited. Over 200 scientists signed a petition called ''Protecting Marine Life in Glacier Bay National Park'' which called for the closure of all commercial fishing in Glacier Bay and the establishment of a marine reserve. The Center for Marine Conservation, the Marine Conservation Biology Institute and several individual commenters cited benefits of protected zones including: they may serve as refugia when regional fisheries management fails; they provide a naturally functioning ecosystem for scientific study; they conserve marine species; they enhance non-consumptive uses of the park; and they benefit commercial, recreation, and subsistence fishing outside protected area. One commenter noted that Alaska has 150% more coastline than the rest of the United States, but only one small marine reserve. On the other hand, several commercial fishermen believed that the wilderness area closures would serve as adequate marine reserves. A few commenters indicated that there was little evidence that marine reserves were beneficial. One commenter indicated that outer coast waters were essentially ''no-take'' areas for much of the year as salmon trolling is limited to one week in July within one mile of shore.

NPS Response: This issue is beyond the scope of this rule which implements congressional requirements for commercial fishing activities in the park and deals with criteria for nontransferable lifetime fishing permits for Glacier Bay proper. Nevertheless, we acknowledge that interest in no-take marine reserves is growing worldwide. Researchers and managers note numerous benefits of areas where limited or no resource extraction takes place including: opportunities for research, preservation of marine species and naturally functioning ecosystems, preservation of biological and genetic diversity, enhanced non-consumptive activities, and potential benefits to fisheries outside the no-take area. The Act, as amended, went far toward establishing no-take marine reserves in Glacier Bay proper by closing several areas to all commercial fishing. Although sport and personal use fisheries continue to be authorized in these areas, very little participation is expected to occur in these areas. The wilderness waters of the Beardslee Islands, Adams Inlet, Hugh Miller Complex, and Rendu Inlet—and portions of Muir Inlet—are closed to motorized traffic during the visitor season and hence receive very little, if any, sport fishing pressure. As a result, the areas closed to commercial fishing by the Act will virtually be no-take areas by default. These areas will allow unparalleled opportunities—previously non-existent in Alaska and rare in northern latitudes worldwide—for researching the effects of marine reserves. The particular elements of a marine reserve research program for Glacier Bay proper will be developed cooperatively with the State of Alaska as required.

Research

Numerous commenters in support of reducing or eliminating commercial fishing in park waters indicated that as a national park, Glacier Bay could serve as an unfished control area, thus providing a unique baseline for future research. Several commenters indicated that one important value of ''no-take'' marine reserves was the opportunity to compare fished and unfished areas and apply this knowledge to the management of ongoing fisheries. Several commenters felt that NPS should monitor any ongoing fisheries carefully to ensure sustainability and compatibility with park values. A few commenters suggested specific studies including bycatch studies, stream colonization processes, and the effects of fishing on fish, marine mammals, birds, and benthic communities. Several commenters felt that the cooperatively developed fisheries management plan for Glacier Bay should outline cooperative research projects that would be coordinated with existing agencies and agreed to by a joint management board. A few commenters including NPCA recommended that NPS pursue additional funding to support ongoing research needs. The Alaska State Legislature recommended that NPS define what is meant by cooperative research and outline a peer review process and quality standards. The State indicated support for a cooperatively designed research program.

Numerous commercial fishermen indicated that ongoing fisheries would not preclude research and would in fact support research because fishermen could provide valuable information on harvest. Several commenters opposed the Dungeness crab research project proposed in the 1997 draft regulations because it involved private profit from sale of crabs caught; other commenters opposed the halibut study outlined in the preamble of the proposed regulations because it would involve closing a valuable fishing area. ATA commented that they did not support additional closures beyond those described in the Act for research purposes. Several commenters expressed concern about the USGS BRD

crab and halibut studies, indicating that they may not be accurate and unbiased. PVOA believed that research at Glacier Bay would not be applicable to other areas of Southeast because park ecosystems were newly deglaciated and were therefore not representative of other Southeast ecosystems.

NPS Response: We believe that the commercial fishing closures described in the Act, as amended, will provide unique opportunities to compare fished and unfished areas. The specific elements of a research program for Glacier Bay will be cooperatively developed with the State of Alaska as required by section 123(a)(1) of the Act. We look forward to developing a cooperative research program with ADFG and others and envision that, while each agency will likely pursue agency-specific research questions, cooperative studies will be designed to address questions of mutual interest. Development of a cooperative program will also benefit from the input of other stakeholders, in particular, local fishermen who remain fishing in Glacier Bay. We acknowledge that much important information can be gleaned from fishermen's logs as well as from fishermen's traditional knowledge. Importantly, we would like to work with ADFG, IPHC and fishermen to develop better harvest tracking mechanisms for the park.

Phase-Out Period

Most comments received discussed the phase-out of commercial fishing in Glacier Bay proper. Many individuals supported the preferred alternative's phase out period of 15 years. Many commenters supported a shorter phase-out period; recommendations included 7 years (including Sierra Club recommendation), 3–5 years, and 2–4 years. One commenter recommended a 30-year phase-out. Many individuals indicated that commercial fishing should be prohibited immediately in all park waters with no phase-out period. Commenters who supported a phase-out typically indicated that this time period would allow local communities to transition from fishing to a different economy and for fisherman to be retrained for other occupations while ultimately protecting the marine resource. Individuals who recommended a shorter or no phase-out period typically expressed concern that irreversible resource impacts could occur during the phase-out period and/or fishing constituencies would work to overturn decisions regarding fishing closures during that period. The Wilderness Society stated that NPS must show that ongoing fisheries would not compromise resources during the phase-out.

Conversely, many commenters recommended at least lifetime tenancy for fishermen with a history of fishing in Glacier Bay or no phase-out at all. Many of these individuals indicated a phase-out even for the period of their lifetime was unfair because it would preclude fishermen's children and grandchildren from ''inheriting'' the right to fish in Glacier Bay.

NPS Response: The Act, as amended, grants qualifying fishermen a non-transferable permit for lifetime access to an authorized Glacier Bay proper commercial fishery. Thus, the question of the duration of any phase-out has now been resolved by Congress. We expect that this condition will result in gradual attrition from the commercial fisheries as fishermen retire. At some point in time (likely decades off), all commercial fishing in Glacier Bay proper will cease following the retirement of all fishermen qualified to continue to fish under section 123 of the Act, as amended. Life tenancy will allow individual fishermen with a sufficient history of fishing in Glacier Bay proper to continue harvesting fish and will provide a long time period for communities to make the transition to a different based economy.

Displaced Fishermen

NPS received many comments that expressed concern that fisheries closures would displace fishermen to other areas impacting the displaced fishermen, other fishermen already fishing those areas, and processors. The State disagreed with NPS's assumption as presented in the EA for the halibut and salmon fisheries that displaced fishermen can be redistributed to other areas without significant impact to their economic well being. Commenters indicated that displaced fishermen would potentially have to travel farther from their home port increasing travel costs (fuel, ice, insurance) and would be less productive in fishing new areas they weren't familiar with. Several commenters also indicated that fishermen already in the areas Glacier Bay fishermen were displaced to would be impacted because of increased fishing pressure.

Several individuals indicated that concentrating fishermen could result in resource depletion in those areas and/or state mandated gear or harvest reductions to preclude resource depletion. A few individuals were concerned that increased concentration of fishermen in smaller areas could increase the risk of collision, entanglement, etc. Several commenters indicated that fishery closures in Glacier Bay would force small boats to fish outer waters, which they are not equipped to do. A few commenters felt that closures of outer waters could displace fishermen to the Gulf of Alaska exposing them to more severe weather with limited anchorages. A few commenters indicated that displaced Glacier Bay fishermen could impact subsistence, personal use or recreational fisheries if they were forced to move into areas used for these fisheries.

NPS Response: We expect that few fishermen will be displaced outside of park waters because: (1) The Act, as amended, authorizes ongoing commercial fisheries in outer waters where well over 80% of historic harvest from the park has occurred; (2) the Act requires that any Dungeness crab fishermen compensated retire their limited entry permits (and pots) from the fishery; (3) the Act provides for life tenancy for qualifying fishermen in Glacier Bay; and (4) these regulations outline relatively lenient and inclusive eligibility criteria for the authorized fisheries in Glacier Bay proper.

Compensation

NPS received several general comments indicating that individuals and communities should be compensated for revenue lost due to fisheries closures. Several commenters recommended that all fishermen displaced from wilderness waters be compensated regardless of their fishery. A few individuals stated that deckhands/crewmembers should be compensated; one commenter recommended that crew should be compensated at the standard crew share of 10–12% of the permit holder's settlement. Several commenters indicated that processors should be compensated. The State provided a list of adversely affected entities who should be considered for compensation including commercial fishery entry permit holders, vessel owners, crewmembers, seafood processors, the State, communities and fishermen who have not historically made landings in Glacier Bay but will be impacted by increased competition or loss of opportunities.

A few commenters recommended compensation strategies that included providing business opportunities for displaced fishermen, providing job training or education tuition, and unspecified financial compensation. One commenter felt that NPS should pay displaced fishermen an average of their gross yearly take for life and compensate fishermen's children and grandchildren similarly. The Alaska

State Legislature recommended that a bipartisan effort be initiated to seek additional compensation funds for deckhands and communities impacted by fishery closures.

Several commenters indicated that compensation for displaced fishermen was inappropriate. These individuals offered that ''nothing is guaranteed for life.'' Several individuals felt that the government should not financially compensate individuals who had been making a living from a public resource. One commenter indicated that the compensation package for Dungeness crabbers should be cut in half. A few individuals offered that the government should not compensate Dungeness crabbers because sea otters moving into crabbing areas would have eventually reduced crab harvest. Several commenters indicated that fishermen should compensate the American public for past use of public resources.

NPS Response: In May 1999 Congress passed section 501 of the 1999 Emergency Supplemental Appropriations Act that significantly expanded federal compensation available for commercial fishermen, communities and others who are directly affected by fisheries closures within Glacier Bay. We are working closely with the State of Alaska to implement this additional $23 million compensation program as rapidly and as prudently as possible.

The Act passed by Congress in October 1998, as amended, also authorized a compensation program specific to Dungeness crab commercial fishermen who fished in the Beardslee Island or Dundas Bay wilderness waters for at least 6 of 12 years during the period 1987–1998. We are currently administering this compensation program and several fishermen have received compensation.

The State urged NPS to publish a formal rulemaking, which clarifies all aspect of the Dungeness crab buyout program. They further urged that an affidavit be sufficient to establish qualification for the buyout program. The State clarified that the State does not intend to participate actively in the permit relinquishment process whereby Dungeness crabbers would relinquish their Dungeness crab permit. Last, the State indicated that it was not clear how NPS intended to calculate fair market value of vessels and gear and urged NPS to be as lenient as possible. One commenter stated that the application period for Dungeness crab compensation process should be extended because all permit holders were not contacted.

NPS Response: A formal rulemaking process to complete the Dungeness crab compensation program, as described by the Act, as amended, is neither required nor warranted. A new rulemaking on the Dungeness crab fishery would take months to complete and actually serve to delay compensation of qualifying fishermen. Moreover, the Act, as amended, imposes strict timeframes for completion of the compensation program. Fair market values for vessels, gear and permit, where needed, will be carefully determined with assistance of professional appraisers. Following passage of the 1998 Act, notice of the compensation program was provided to all 1,400 individuals who had provided comment or participated in workshops, described in extensive media coverage of the Act, and published in the **Federal Register**. More recently, as part of the May 1999 amendment to the Act, Congress changed the eligibility criteria and extended the application period for the Dungeness crab fishery compensation program. Notice of these changes was published in the **Federal Register** (64 FR 32888, June 18, 1999) and subsequently mailed to every permit holder in the Southeast Alaska Dungeness crab commercial fishery.

Safety

Several commenters expressed concern that smaller boats that typically fished Glacier Bay proper could not safely fish outer waters if they were displaced. A few commenters expressed concern that fishery closures on the outer coast would preclude use of the bays and protected anchorages during inclement weather. The ATA expressed concern that the ability of fishermen to seek safe harborage would be impacted if they had to receive permission from the superintendent for it. The State requested that the language providing for safe harborage in the 1997 rulemaking preamble be included in the body of subsequent rulemaking.

NPS Response: We expect that relatively few fishermen will be displaced and little crowding will occur based on the conditions outlined in the Act (continued fishing in outer waters/ life tenancy for qualifying fishermen in Glacier Bay proper) and the relatively lenient and inclusive eligibility criteria described in this rule for the authorized Glacier Bay proper fisheries. Moreover, nothing in this rulemaking, existing park regulations, or the Act would affect the ability of fishermen or other vessel operators to seek safe harbor at any time within the park under hazardous weather or sea conditions, when experiencing mechanical problems, or in other exigent circumstances.

Personal Use, Subsistence and Sport Fishing

One commenter felt that NPS should continue to provide for personal use fisheries. Several commenters indicated that NPS should provide for subsistence fishing. Many commenters indicated that it was unfair to preclude commercial fishing while allowing guided sport fishing to continue. The State offered that NPS rulemaking should not restrict the State's ability to manage personal use fisheries. They further indicated that subsistence and personal use fisheries have occurred within park boundaries for many years and are not limited to residents of particular communities or areas. And they indicated that residents of Hoonah are authorized to participate in these fisheries in Glacier Bay, as are residents of other communities.

NPS Response: Nothing in these regulations on grandfather criteria for lifetime permits for commercial fishing in Glacier Bay proper alters or supercedes existing authorities for personal use or sport fisheries. Existing personal use and sport fishing opportunities will continue consistent with NPS and non-conflicting state regulations. ANILCA specifically authorizes sport fishing in the park; ANILCA does not, however, authorize any Title VIII subsistence activities, including subsistence fishing, in Glacier Bay National Park. We have proposed to the State that all fisheries in Glacier Bay National Park—including authorized commercial, sport and personal use fisheries—be addressed in the cooperatively developed fisheries management plan.

Environmental Assessment

While several commenters noted that portions of the Environmental Assessment were inaccurate, very few comments (with the exception of the State, ATA, PVOA and one individual commenter) provided specific details on which information and/or analysis was incomplete or inaccurate. Several commenters in support of ongoing fisheries felt that, in general, the EA overstated the impacts of commercial fishing on park resources and visitors and understated the effects of closures on fishermen and the local economy.

NPS Response: We acknowledge that commenters provided valuable information with which to improve the analysis presented in the Commercial Fishing Environmental Assessment. Specific comments, particularly regarding economic effects have been incorporated within the context of the Regulatory Flexibility Analysis

presented below. Specific comments associated with biological issues will be addressed in the fisheries management plan. Notwithstanding these specific comments, we believe that the document, with an errata sheet, is balanced and fairly reflects the mix of potential effects associated with continued authorized commercial fishing activities and/or closures.

A few commenters believed that the EA described potential impacts that were unlikely to occur and implied that commercial fishing vessels are the sole or main source of vessel effects on marine and terrestrial systems when in fact they are a minor component of vessel traffic in Glacier Bay. A few commenters offered that preparing separate environmental documents for commercial fishing, sport fishing, vessel management, new park infrastructure, etc. does not allow the public to see the ''whole'' picture or to understand the cumulative effects of these activities.

NPS Response: One purpose of an Environmental Assessment is to outline all the potential social and biological effects of a proposed federal action. Consequently, the Commercial Fishing Environmental Assessment described the potential effects of commercial fishing on the human and biological environment in and near Glacier Bay National Park. We determined that the commercial fishing issue and associated analysis should be addressed separately from other related issues including vessel management (addressed in the 1996 Vessel Management Plan and Environmental Assessment) and other ongoing fisheries (which will be addressed in the cooperatively developed fisheries management plan). The cumulative impacts section of the Commercial Fishing Environmental Assessment was provided to assist the public in placing this issue within the context of other related park actions and programs. Moreover, many of the original issues addressed in the 1997 proposed rulemaking and its accompanying EA have now been definitively resolved by Congress in the Act, as amended, and are no longer discretionary Federal actions requiring the same scope of NEPA analysis as before.

Section by Section Analysis

The regulations in this section implement the statutory requirements of section 123 of the Omnibus Emergency and Supplemental Appropriations Act for FY 1999 (the ''Act'') (Pub. L. 105–277), as amended by section 501 of the 1999 Emergency Supplemental Appropriations Act (Pub. L. 106–31). Where possible, the language used in this section of the regulations mirrors the language used in the Act, as amended.

Section 13.65(a)(1) of the regulations provides definitions for the terms ''commercial fishing'', ''Glacier Bay'' and ''outer waters.'' The definition for ''commercial fishing'' is the same as used for the park's vessel regulations in section 13.65(b) of Title 36 of the Code of Federal Regulations. The terms ''Glacier Bay'' and ''outer waters'' are used in these regulations to describe marine water areas of the park that are to be regulated differently under requirements of the Act, as amended. The definition for ''Glacier Bay'' mirrors the definition for ''Glacier Bay Proper'' that is provided in section 123(c) of the Act. This definition is essentially the same as that provided in the park's vessel management and resource protection regulations found at section 13.65(b)(1) of Title 36 of the Code of Federal Regulations. The term ''outer waters'' is used to describe all of the marine waters of the park outside of Glacier Bay proper. This includes areas of Icy Straits, Cross Sound, and coastal areas on the Gulf of Alaska running from Cape Spencer to Sea Otter Creek, beyond Cape Fairweather.

Section 13.65(a)(2) of the regulations provides authorization for commercial fishing to continue in some of the non-wilderness marine waters of the park, as specifically provided for by the Act. The Act calls for the State of Alaska and the Secretary of the Interior to cooperatively develop a fisheries management plan for the regulation of commercial fisheries in the park. We anticipate that the fisheries management plan will reflect the requirements of the Act and other applicable federal and state laws, as well as international treaties, and serve to protect park values and purposes, prohibit new or expanded commercial fisheries, and provide opportunity for the study of marine resources. This authorization for commercial fishing supercedes the general regulatory prohibition on commercial fishing in the park found at 2.3(d)(4) of this chapter. The authorization does not, however, exempt commercial fishing activities from other park regulations and programs in place to protect park resources and visitor use opportunities. Commercial fishing activities are to be conducted and managed in concert with park purposes and values.

Section 13.65(a)(3) of the regulation reaffirms the statutory closure of marine wilderness waters as required by the Wilderness Act and restated by section 123(b) of the Act. Two recent federal court decisions have made clear the statutory prohibition on most commercial activities—including commercial fishing—in designated wilderness areas.

Section 13.65(a)(4) of this regulation affirms that, consistent with the requirements of Section 123(a)(1) of the Act, commercial fishing is authorized in the marine outer waters of the park subject to a cooperatively developed State/Federal park fisheries management plan and applicable federal and non-conflicting state laws and regulations.

Section 13.65(a)(5) describes specific requirements and limitations on commercial fisheries in Glacier Bay proper, consistent with the Act, as amended. Section 13.65(a)(5)(i) of the regulation limits Glacier Bay proper commercial fisheries to longlining for halibut, pot or ring net fishing for Tanner crab, and trolling for salmon. These are the only commercial fisheries authorized to continue in Glacier Bay proper. Section 13.65(a)(5)(ii) of the regulations limits participation in the authorized Glacier Bay proper commercial fisheries only to individuals who have a nontransferable lifetime special use permit for access to the fishery issued by the Superintendent. This section clarifies that the requirement for this lifetime special use permit is not currently scheduled to go into effect until January 1, 2000. The delayed implementation date is intended to provide adequate opportunity for the public to comment on this rule, to review those comments and make any adjustments to the rule as may be warranted, and to allow sufficient time for fishermen to apply for and receive the access permits before a permit requirement is put into effect. This section also makes clear that the permits are non-transferable—reflecting the language and requirements of the Act. However, if a temporary emergency transfer of a permit is approved by CFEC due to illness or disability of a temporary, unexpected and unforeseen nature, we will also consider issuing a temporary special use permit transfer for the period (generally, a year or less).

Section 13.65(a)(5)(iii) describes how to apply for a special use permit for access. Subsection (A) restates the Act in requiring an applicant to possess a valid commercial fishing permit for the district or statistical area encompassing Glacier Bay proper. Subsection (B) outlines the specific eligibility requirements that must be met to obtain a special use permit for access to the Glacier Bay fisheries. These eligibility criteria have undergone a Regulatory Flexibility Act analysis, and have been determined to meet the goals of this regulation, while seeking to minimize

impacts to commercial fishermen and other affected small businesses to the extent consistent with the Act, as amended. A 12-month application period to obtain a special use permit for access is described; conclusion of the eligibility determinations by October 1, 2000 may be important to completion of the $23,000,000 compensation program authorized by Congress in the 1999 amendment to the Act. This subsection also outlines the specific type of documentation that an applicant must provide to the Superintendent to obtain an access permit. The Act requires fishermen to provide a sworn and notarized affidavit describing their particular history in one or more of the three authorized commercial fisheries. NPS will provide a simple affidavit form to applicants upon request. The Act also requires applicants to provide other available documentation that corroborates their history of participation in the fishery. Licensing and landing histories—two types of readily available corroborating documentation—are required by this regulation. A certified printout of a fisherman's licensing history in a fishery is available at no charge from the CFEC. The licensing history corroborates participation in the fishery during the qualifying years. Landing reports, documenting a fisherman's harvest activities in a specific commercial fishery by year and location, are available at no charge from the ADFG. A form is required from ADFG to obtain this information. We are aware of the limitations of some landing data—there is, for example, no separate statistical reporting unit for Glacier Bay for salmon trolling. Accordingly, we intend to consider salmon landing reports for District 114 as indirect evidence of participation in the Glacier Bay fishery; this indirect evidence must be supported by additional corroborating documentation. For the halibut and Tanner crab fisheries, because specific reporting areas are described for Glacier Bay, additional corroborating documentation will be required where landing data are not conclusive. In any event, landing reports must be for the reporting area immediately adjacent to Glacier Bay to be considered. Finally, subsection (C) describes the delivery address to apply for an access permit, and subsection (D) clarifies that the Superintendent will make a written determination and provide a copy to the applicant. Fishermen will be afforded opportunity to provide additional information, as warranted or needed. We anticipate that it could take 30 days or more to process and respond to an application, depending on the volume and completeness of the applications received. For this reason, fishermen are advised to apply at least 30 days in advance of anticipated fishing activities in Glacier Bay proper that will require a special use permit.

Subsection 13.65(a)(5)(iv) describes special use permit denial and appeal procedures for an applicant. These procedures are similar to those in place for other NPS permit programs in Alaska.

Subsection 13.65(a)(5)(v) makes clear that the special use permits for access to the Glacier Bay proper commercial fisheries are renewable for the lifetime of an access permit holder, provided they continue to hold a valid commercial fishing permit and are otherwise qualified to participate in the fishery. We expect to reissue the special use permits for access on a five-year cycle. This will provide a recurring opportunity to update the list of fishermen authorized to commercial fish in Glacier Bay. NPS will not charge a fee for these special use permits. No special use permits will be required to participate in commercial fisheries otherwise authorized in the marine waters of the park outside Glacier Bay.

Section 13.65(a)(5)(vi) describes non-wilderness areas closed to commercial fishing within Glacier Bay proper, as required by the Act, as amended by section 501 of the 1999 Emergency Supplemental Appropriations Act (May 21, 1999). The 1999 amendment delays implementation of these non-wilderness closures during the 1999 fishing seasons with respect to the commercial halibut and salmon troll fisheries. Wilderness areas remained closed to all commercial fishing under the 1999 amendment, with no delay in implementation; these closures were put into effect by NPS on June 15, 1999. NPS will provide detailed maps and charts depicting these non-wilderness and wilderness closures to every fisherman who receives a special use permit for access to the three authorized Glacier Bay proper commercial fisheries. Subsection (A) describes the general closure of the west arm of Glacier Bay to commercial fishing, with the exception of trolling for king salmon during the State's winter season troll fishery. Subsection (B) implements the closure of Tarr Inlet, Johns Hopkins Inlet, Reid Inlet, and Geike Inlet to all commercial fisheries. These closures include the entirety of each of these inlets, as depicted on the maps and charts available from the Superintendent. Subsection (C) closes the east arm of Glacier Bay north of a line drawn across the mouth of the arm from Point Caroline through the southern point of Garforth Island to the east shore mainland. The Act provides an exception to this prohibition that allows trolling for king salmon during the State's winter troll fishery ''south of a line drawn across Muir Inlet at the southernmost point of Adams Inlet.'' This line is described in this subsection as 58° 50′N latitude, a description more readily understood by commercial fishermen.

Drafting Information

The primary authors of this rule are Randy King, Chief Ranger, Glacier Bay National Park and Preserve; Mary Beth Moss, Chief of Resource Management, Glacier Bay National Park and Preserve; and Donald Barry, Assistant Secretary of the Interior for Fish and Wildlife and Parks. Other key contributors include Molly Ross, Special Assistant to the Assistant Secretary for Fish and Wildlife and Parks; Marvin Jensen and John Hiscock of the National Park Service.

Compliance With Other Laws

Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601 *et seq.*, we have prepared an initial regulatory flexibility analysis on the expected impact of this rule on small business entities and have determined that the rule will have a significant economic effect on a substantial number of small entities.

With this rule we are establishing eligibility requirements and application procedures for obtaining a special use permit for lifetime access to the three commercial fisheries authorized in Glacier Bay proper.

At issue is the effect that fishing eligibility restrictions in Park waters would have on numerous individuals and several communities. Commercial fishing is one of the largest employers in Southeast Alaska. The majority of private sector income in the Southeast is derived from the seafood industry, and the economic effect of these fisheries extends throughout Southeast Alaska and the State. Local fishing village governments are supported by commercial fishing, and in some cases depend on raw fish taxes. Restricted eligibility would not only directly affect fishermen unable to meet the participation criteria, but is also likely to affect deckhands, vessel owners, processors, other local business that either directly or indirectly support and are supported by the commercial fishing industry, and village governments.

In designing the eligibility criteria, we attempted to minimize the economic

impacts to fishermen, communities, and others associated with the commercial fishing industry. The Act authorizes existing commercial fisheries to continue in outer waters where it is estimated that over 80% of the harvest from Park waters occurs. Additional harvest will continue in most of Glacier Bay during the life tenancy period of qualifying fishermen, supporting fishermen and communities over the course of the current generation. About 18% of the Park's marine waters (wilderness and non-wilderness) will be closed immediately to commercial fishing. These closed waters have historically accounted for approximately 10% of total biomass harvested in the Park. Within Southeast Alaska, the Bay has historically accounted for only 2–4% of the commercial halibut harvest; approximately 7–12% of commercial Tanner crab harvest; and an indeterminate, but presumably small percentage of the salmon harvest. 1

We expect that some portion of the revenue previously harvested in the closed areas of the Park will be recovered in Cross Sound and Icy Strait and/or other Southeast waters. This is particularly likely for fishermen pursuing highly migratory species like halibut and salmon. The stocks of these species do not confine themselves to the Bay. They move throughout the local aquatic environment, and fishermen are used to pursuing them more widely. Halibut fishermen operate under an individual quota system and with a fairly lengthy (8-month) fishing season. They should be able to select time and fishing location to achieve their quotas, avoiding the excessive costs and competitive pressures created by derby fishing conditions. Despite the fact that salmon are less broadly distributed in space or in time than halibut, most displaced salmon trollers (power and hand) are likely to be able to recoup the harvest lost from Glacier Bay proper. However, small hand troll operators will probably encounter increased safety risks and other increased costs due to more exposed weather conditions and associated reduced access to migratory king salmon. The governing conditions are less accommodating for Tanner crab fishermen. Tanner crab fishing grounds are fully utilized with few, if any unexploited areas. Displaced Tanner fishermen are unlikely to recover their lost harvest.

In addition, although fishermen who do not meet the eligibility criteria will be displaced or excluded from the Bay, the above statistical data on the distribution of harvests from Park waters suggests that most fishermen who operate in Park waters are not heavily dependent on Glacier Bay proper fisheries. The data indicate that most of these fishermen have been harvesting fish and earning revenues outside the Bay. Moreover, in the Act and amendments thereto, Congress provided for compensation to affected communities and individuals.

Based largely on data collected by the Commercial Fisheries Entry Commission (CFEC) and two studies conducted by Jeff Hartman, Alaska Department of Fish and Game (Hartman 1998 and 1999), we estimate that the economic effects of the eligibility conditions established in the interim rule (direct, indirect, and induced) have a present value of $9.2M (1997$).

- The estimate is inclusive, covering losses of income to fishing permit holders, vessel owners, crew members, seafood processing firms and their employees, local businesses and communities, and the State. The restrictions on fishing may also diminish property values (fishing vessels and gear; real estate and other investment capital), but no estimate was made of these losses.
- The estimate is conservative. With unemployment in the local communities already higher than the State average, employment opportunities are limited. The NPS assumed that for many of the affected individuals the income losses would be perpetual. This and other assumptions explained below lead to an overestimate of the effects of the rule.

The Commercial Fisheries Entry Commission (CFEC) maintains detailed, annual information on permit holders, including size, location, and value of catch (gross earnings). There are two problems with the harvest reporting system which preclude using these data alone to estimate the economic effects of limiting access to the fisheries in the Bay:

- The earnings information is gross, not net.
- The statistical areas for which data are reported frequently do not coincide with Park boundaries, making it difficult to apportion harvest to Park waters.

Fortunately, in 1994, Hartman conducted an in-depth survey of permit holders, vessel owners, crews, and processing firms and their workers, collecting detailed cost information (Hartman 1998). This survey information allows one to estimate net income and profits for the various groups.

In 1999, Hartman utilized the information and results of his 1994 survey in conjunction with decadal (1987–96) CFEC data on harvests size and value, location of catch, and permitee participation by venue to estimate the losses associated with phasing out commercial fishing at Glacier Bay (Hartman 1999). Hartman found that the present value of losses in income to the fishing industry and communities in Southeast Alaska ranged between $16M and $23M (1997$). These estimates do not include diminutions in the value of assets, but they do account for:

- All regional income losses (direct, indirect, and induced), using a multiplier of 1.5. The relatively small multiplier reflects the extent to which the region is dependent upon imports.
- Lost tax revenues to the State. Alaska levies a tax on commercial fishing businesses as well as a corporate income tax. The State shares the fishing tax with local communities based on location of landing.
- Certain transactions cost and administration costs for the compensation program. Hartman estimates the present value of these costs at $4.3M. Over-compensation of firms and individuals ($3.4M) due to the difficulty of precisely identifying affected entities and the magnitude of their losses constitutes the largest component of the transactions costs.

We are puzzled by the inclusion of these transactions and administration costs, especially the transaction costs. They are a transfer payment, not an income loss, and since Congress has funded the compensation program, this $3.4M constitutes an increase in regional income at the expense of taxpayers nationally. In our use of Hartman's analysis, we exclude these expenditures together with $200K for Dungeness crabbers. Losses sustained by Dungeness crabbers are due to the Act, not the promulgation of eligibility conditions for Tanner, halibut, and salmon fishermen. Excluding these costs leaves $670K in administrative expenses. The cost of administering the compensation program is a burden on the State and the NPS, but not a loss to the regional economies. Indeed, depending upon how the monies are disbursed, they may be a gain to the regional economies, especially since these expenses are likely to be covered by taxpayers nationally. Excluding all transactions and administration costs reduces the estimated regional income effects to $12–19M.

We have confidence in Hartman's analysis, both because of the care with which it was designed and executed and because Congress based its $23M appropriation for compensation on this analysis. This latter is a strong

endorsement. Hartman's analysis of income losses is more comprehensive than that required of us, however. Hartman wanted to identify all impacts to the region from phasing out commercial fishing in the Bay. We are only responsible for estimating the impacts associated with the promulgation of eligibility conditions for participating in the Tanner, halibut, and salmon troll fisheries. Hartman's upper bound estimate for this subset is $12.1M.

In conducting his analysis, Hartman adopted much more restrictive eligibility criteria than those selected by the Secretary, excluding fishermen with less than 6 years of participation in 10. Scaling back Hartman's results to exclude only those with less than 3 years of participation during the decade reduces the upper bound estimate of the present value of the income effects to $9.2M. At a discount rate of 3% in perpetuity this is an annual impact of $276K. Annualizing over 50 years gives an impact of $358K.

We believe these to be conservative estimates of the economic effect of the eligibility criteria selected by the Secretary on small entities (individuals, firms, communities, and village governments) in Southeast Alaska. First, our estimate is based on Hartman's upper bound, which assumes among other things that most displaced fishermen never work again. Secondly, because CFEC statistical areas do not coincide with Park boundaries, the data overestimate lost harvest and income due to the eligibility criteria. Further, participation data for 1989–1998, the period used by the Secretary in selecting the eligibility criteria, indicate that fewer participants would be excluded from the Bay fisheries than data for the period 1987–1996, the period underlying Hartman's analysis. No effort was made to correct for these influences and refine our estimates further.

We have placed a copy of the regulatory flexibility analysis on file in the Administrative Record at the address specified in the **ADDRESSES** section. Public comment is invited on the regulatory flexibility analysis.

Regulatory Planning and Review

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, the environment, or other units of government. Jobs in local Alaska communities will be lost and a Federally funded compensation programs will mitigate the economic impacts on individuals and the communities. An economic analysis has been completed and is attached (See Regulatory Flexibility Act Section). With this rule we are establishing eligibility requirements and application procedures for obtaining a special use permit for lifetime access to three commercial fisheries authorized in Glacier Bay proper.

b. This rule will not create inconsistencies with other agencies' actions. The Act calls for the Secretary and the State of Alaska (State) to cooperate in the development of a management plan to regulate these ongoing commercial fisheries. Certain inlets or areas of inlets of Glacier Bay proper are either closed to all commercial fishing, or limited to trolling by qualifying fishermen for king salmon during the winter season. The Act confirms the statutory prohibition on commercial fishing within the Park's designated wilderness areas, and authorizes compensation for qualifying Dungeness crab fishermen who had fished in designated wilderness waters of the Beardslee Islands and Dundas Bay.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule implements and establishes eligibility requirements and application procedures for obtaining a special use permit for lifetime access to three commercial fisheries authorized in Glacier Bay proper.

d. This rule will not raise novel legal or policy issues. States and other Federal programs have used similar measures to compensate individuals to accomplish program initiatives.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule:

a. Does not have an effect on the economy of $100 million or more, as demonstrated in the economic analysis (see Regulatory Flexibility Act Section).

b. Will not cause an increase in costs or prices for consumers, individual industries, Federal, State or local governments entities, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises (See Regulatory Flexibility Act Section).

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. This rule does not change the relationship between the NPS and small governments. (See Regulatory Flexibility Act Section).

b. The Department has determined and certifies pursuant the Unfunded Mandates Reform Act, that this rule will not impose a cost of $100 million or more in any given year on local, State or tribal governments or private entities.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. No takings of personal property will occur as a result of this rule. Perceived takings due to job loss will be offset by the compensation program. This rule implements and establishes eligibility requirements and application procedures for obtaining a special use permit for lifetime access to three commercial fisheries authorized in Glacier Bay proper. (See Regulatory Flexibility Act Section).

Federalism

In accordance with Executive Order 12612, the rule does not have significant Federalism effects. The primary effect of this rule is to implement eligibility requirements and application procedures for obtaining a special use permit for lifetime access to three commercial fisheries authorized in waters of Glacier Bay National Park.

Civil Justice Reform

The Department has determined that this rule meets the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988. The rule does not unduly burden the judicial system. NPS drafted this rule in ''Plain-English'' to provide clear standards and to ensure that the rule is easily understood. We consulted with the Department of Interior's Office of the Solicitor during the drafting process.

Paperwork Reduction Act

This rule contains information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. The collection of information contained in section 13.65 (a)(5)(iii) of this rule is for issuing a special use permit for lifetime access to three authorized commercial fisheries within Glacier Bay proper based upon sufficient historical participation. The

information collected will be used to determine who qualifies for the issuance of a special use permit for lifetime access. It is necessary for someone to apply to obtain a permit.

Specifically, NPS needs the following information from an applicant to issue a special use permit for lifetime access to the salmon troll fishery, Tanner crab pot and ring net fishery, and halibut longline fishery authorized within Glacier Bay proper: (1) Full name, date of birth, mailing address and phone number. (2) A sworn and notarized personal affidavit attesting to the applicant's history of participation as a limited entry permit or license holder in one or more of the three authorized Glacier Bay fisheries during the qualifying years. (3) A copy of a current State or—in the case of halibut—International Pacific Halibut Commission commercial fishing permit card or license that is valid for the area including Glacier Bay proper. (4) Documentation of commercial landings within the statistical units or areas that include Glacier Bay proper during the qualifying period. (5) Any available corroborating information that can assist in a determination of eligibility for the lifetime access permits for the three authorized fisheries within Glacier Bay proper.

NPS has submitted the necessary documentation to the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and received approval for the collection of this information for all areas covered by this rule under permit number 1024–0125. A document will be published in the **Federal Register** establishing an effective date for Sec. 13.65(a)(5)(iii).

The public reporting burden for the collection of this information is estimated to average less than two hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden of these information collection requests, to Information Collection Officer, National Park Service, 800 North Capitol Street, Washington, DC 20001; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for Department of the Interior (1024–0125), Washington, D.C. 20503.

National Environmental Policy Act

An Environmental Assessment (EA) that described five alternatives for management of commercial fishing activities within the marine waters of Glacier Bay National Park was distributed for public comment on April 10, 1998. That document described the major issues associated with commercial fishing activities within the park as identified through public meetings, written comments and staff analysis, and examined the social and biological consequences of the five alternatives. The 1997 proposed regulations were described in Alternative 1, and represented the preferred alternative for purposes of the EA. Public comment on the proposed rule and EA were taken at the same time.

Congress, in passing section 123 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999, clarified and limited the Secretary of the Interior's discretionary authority with respect to authorizing commercial fishing in the park. Thus, the Act required the Secretary to describe eligibility criteria for the lifetime access permits for Glacier Bay proper, closed certain named inlets and wilderness waters, and clarified that the outer marine waters of the park should remain open to commercial fishing under a cooperatively developed State/Federal fisheries management plan.

Consistent with the requirements of the Act, as amended, we are providing a 45-day public comment period on this rule. All comments received on this rule will be considered prior to any decision under the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). By requiring completion of the final rule by September 30, 1999, the Act, as amended, does preclude any opportunity to prepare an EIS instead of an EA on this rulemaking. We have placed copies of the 1998 EA on file in the administrative record; copies of the EA may be obtained by contacting the park at the address or phone number listed under **FOR FURTHER INFORMATION CONTACT**.

Clarity of the Rule

Executive Order requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make this rule easier to understand? Please send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail the comments to this address: exsec@ios.doi.gov.

Public Comment Solicitation

If you wish to comment you may mail comments to Tomie Lee, Superintendent, Glacier Bay National Park and Preserve, P. O. Box 140, Gustavus, Alaska 99826. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

List of Subjects in 36 CFR Part 13

Alaska, National Parks, Reporting and record keeping requirements.

In consideration of the foregoing, NPS proposes to amend 36 CFR part 13 as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

1. The authority citation for part 13 is amended to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; Sec. 13.65 also issued under 16 U.S.C. 1a–2(h), 20, 1361, 1531, 3197; Pub. L. 105–277, 112 Stat. 2681, October 21, 1998; Pub. L. 106–31, 113 Stat. 57, May 21, 1999.

2. Section 13.65 is amended by adding paragraph (a) and removing and

reserving paragraphs (b)(5) and (b)(6) to read as follows:

§ 13.65 Glacier Bay National Park and Preserve.

(a) *Commercial Fishing*—(1) *Definitions.* As used in this section:

Commercial fishing means conducting fishing activities under the appropriate commercial fishing permits and licenses as required and defined by the state of Alaska.

Glacier Bay means all marine waters within Glacier Bay, including coves and inlets, north of an imaginary line drawn from Point Gustavus to Point Carolus.

Outer waters means all of the non-wilderness marine waters of the park located outside of Glacier Bay.

(2) *Authorization.* Commercial fishing is authorized in the non-wilderness marine waters of the park in compliance with paragraph (a) of this section, and applicable federal and non-conflicting state laws and regulations.

(3) *Wilderness.* Commercial fishing and associated buying and processing operations within designated wilderness are prohibited. Maps and charts showing designated wilderness areas are available from the Superintendent.

(4) *Outer waters.* Commercial fishing is authorized within the marine outer waters of the park subject to a cooperatively developed State/Federal park fisheries management plan and applicable federal and non-conflicting state laws and regulations.

(5) *Glacier Bay.* (i) *Authorized fisheries.* Commercial fisheries within Glacier Bay are limited only to longline fishing for halibut, pot or ring net fishing for Tanner crab, and trolling for salmon. All other commercial fisheries are prohibited.

(ii) *Limits on participation.* After January 1, 2000, longlining for halibut, pot or ring net fishing for Tanner crab, or trolling for salmon in Glacier Bay is prohibited without a special use permit for access to the fishery issued by the Superintendent. The special use permit for access is non-transferable.

(iii) *Obtaining a special use permit.* The special use permits for access to the three authorized Glacier Bay commercial fisheries are available to fishermen who-(A) Possess a valid commercial fishing permit for one or more of the three fisheries authorized in Glacier Bay; and,

(B) Provide documentation to the Superintendent prior to October 1, 2000, which demonstrates that the individual participated as a permit holder in the Glacier Bay commercial halibut fishery for at least two years during the period 1992—1998, or, in the case of the Glacier Bay salmon or Tanner crab commercial fisheries, participated as a permit holder for at least three years during the period 1989—1998. The documentation provided must include: full name, date of birth, mailing address and phone number; a sworn and notarized personal affidavit attesting to the applicant's history of participation as a permit holder in one or more of the three authorized fisheries within Glacier Bay during the qualifying period; a copy of a current State of Alaska or, in the case of halibut, International Pacific Halibut Commission commercial fishing permit or license that is valid for the area including Glacier Bay; documentation of licensing history for the fishery during the qualifying period; documentation of commercial landings for the fishery during the qualifying periods and within the statistical unit or area that includes Glacier Bay or Icy Straits. Fishermen are requested to provide any additional corroborating documentation that might be available to assist in a timely determination of eligibility for the special use permits for access.

(C) This information should be delivered to the Superintendent, Attn: Access Permit Program, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826.

(D) The Superintendent will make a written determination of eligibility for the special use permit for access based on information provided by the applicant. A copy of this written determination will be provided to the applicant. If additional information is required to make an eligibility determination, applicants will be notified in writing of that need and be afforded an opportunity to provide it.

(iv) *Special use permit denial and appeal procedures.* If an applicant is determined not eligible for a special use permit for access, the Superintendent will provide the applicant with the reasons for the denial in writing within 15 days of the decision. Any applicant adversely affected by the Superintendent's determination may appeal to the Regional Director, Alaska Region, within 180 days. Applicants must substantiate the basis of their disagreement with the Superintendent's determination. The Regional Director will provide an opportunity for an informal meeting to discuss the appeal within 30 days of receiving the applicant's appeal. Within 15 days of receipt of written materials and informal meeting, if requested, the Regional Director will affirm, reverse, or modify the Superintendent's determination and set forth in writing the basis for the decision. A copy of the decision will be forwarded promptly to the applicant and will constitute final agency action.

(v) *Special use permit renewal.* A special use permit for access to an authorized Glacier Bay fishery will be renewed at 5-year intervals for the lifetime of a fisherman who continues to hold a valid commercial fishing permit or license and is otherwise eligible to participate in the fishery under federal and state law.

(vi) *Areas closed to fishing.* Maps and charts showing marine areas of Glacier Bay closed to commercial fishing are available from the Superintendent.

(A) After December 31, 1999 the west arm of Glacier Bay north of 58°50′N latitude is closed to all commercial fishing, with exception of trolling for king salmon during the period October 1 through April 30, in compliance with state commercial fishing regulations.

(B) After December 31, 1999 Tarr Inlet, Johns Hopkins Inlet, Reid Inlet and Geike Inlet are closed to all commercial fishing.

(C) After December 31, 1999 the east arm of Glacier Bay, north of an imaginary line running from Point Caroline through the southern point of Garforth Island and extending to the east side of Muir Inlet, is closed to commercial fishing, with exception of trolling for king salmon south of 58°50′N latitude during the period October 1 through April 30, in compliance with state commercial fishing regulations.

(b) * * *

(5) [Reserved]

(6) [Reserved]

* * * * *

Dated: July 2, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–19703 Filed 7–30–99; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6410–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Sand Springs Petrochemical Complex site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces its