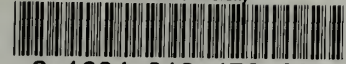


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# Navigating Troubled Waters

A History of Commercial Fishing  
in Glacier Bay, Alaska



Author: James Mackovjak



# Navigating Troubled Waters:

Part 1: A History of Commercial Fishing in Glacier Bay, Alaska

Part 2: Hoonah's "Million Dollar Fleet"

U.S. Department of the Interior

National Park Service

Glacier Bay National Park and Preserve  
Gustavus, Alaska

Author: James Mackovjak

2010

Front cover: Duke Rothwell's Dungeness crab vessel *Adeline* in Bartlett Cove, ca. 1970 (courtesy Charles V. Yanda)

Back cover: Detail, Bartlett Cove waters, ca. 1970 (courtesy Charles V. Yanda)



## Dedication

This book is dedicated to Bob Howe, who was superintendent of Glacier Bay National Monument from 1966 until 1975 and a great friend of the author. Bob's enthusiasm for Glacier Bay and Alaska were an inspiration to all who had the good fortune to know him.

# Part 1: A History of Commercial Fishing in Glacier Bay, Alaska

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# Preface

In the telling of any history there are potentially as many versions of events as there are participants. And unless an effort is made to capture an accurate telling of history in written form – a scholarly work relying on records along with recollections of the participants – experience teaches us that “history” can take on a life of its own. When it is only “oral,” history can change with each telling and eventually devolve into whatever people can recall, or, in some cases, whatever they choose to recall. By the fourth or fifth generation of telling, it can little resemble actual events.

But to accurately capture history is a challenge, made all the more difficult by situations like the question of commercial fishing in Glacier Bay National Park. Over the course of several decades the issue has played out at multiple levels – from crews working the decks of fishing boats and fisher families gathered around their kitchen tables in Alaska, to the halls of congress and ultimately the highest court in the land. At its core are conflicts inherent in some of the most basic tenets of our society – the place of Native peoples within their traditional homelands; state’s rights versus federal rights; the ability of people to make a living off the land; the desire of a nation to recognize and protect one of its most treasured landscapes. In a very real sense the Glacier Bay commercial fishing issue pitted natural associates against one another – on the one hand a conservationist-fisherman constituency interested in managing fish populations for “sustained yield”; on the other a conservationist-naturalist constituency interested in managing the same populations as “natural and healthy.” In the middle of this battle, the employees of the National Park Service toiled to fulfill the agency’s mission while living and interacting within the affected communities. Even to this day, it is a history that is not yet finished, but will continue to evolve in the lives of fishermen, communities and park visitors for decades to come as the phase-out of commercial fishing in the bay plays out. By the time the final resolution was coming into focus, the issue had been going on for so long, with so many players and so many complexities, that no one person could really quite grasp it all. But with the departure of each person who had participated in it, a little

of the history left with them. That concern was behind Superintendent Tomie Lee’s decision to commission this history while it was still fresh, and while many of the players were still around.

The challenge then was to find a writer for this history, one who was both knowledgeable of the subject matter but with a broad enough grasp of the larger contexts to put everything in perspective. Foremost, the park service needed to consider the primary audience we hoped to reach. A technical history of federal and state policy on ocean and fishery management was clearly an option, but we felt such a work would reach only a limited audience. Although those important issues needed to be addressed, ultimately our decision was driven by a greater need for a history that would be widely read by local and regional audiences, the people most affected by the Glacier Bay decisions and who form much of the social fabric where the park exists.

Fortunately, we did not have to go far to find our writer. Although not an academic historian by training, James Mackovjak has proven himself a capable historian. His first work, a much appreciated local history of Gustavus, *Hope and Hard Work*, reveals solid writing skills and scholarship. More recently he has completed a voluminous work on the early history of logging on the Tongass National Forest that has been accepted for publication by the Forest History Society. In addition to being an historian, Jim has also worked in Alaska’s commercial fishing industry for several decades, mostly right here at Glacier Bay. In the Author’s Note that follows, Jim candidly describes his background and how he became involved in this project.

So in a real sense this is a “local history,” written by and for the people most affected by the events portrayed herein. But it is also a scholarly work that puts this story in the broader contexts of state, national and ultimately international policy and politics. I hope it is a book that will find a place not just on the library shelf and on the policy maker’s desk, but also in the homes and on the fishing boats of the people who continue to fish the waters of Southeast Alaska.

Cherry Payne  
Superintendent  
Glacier Bay National Park and Preserve

*[T]he Service thus established shall promote and regulate the use of Federal areas known as national parks, monuments and reservations . . . by such means and measures as conform to the fundamental purpose of the said parks, monuments and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.*  
—National Park Service Organic Act, 1916<sup>1</sup>

\* \* \*

*If people want both to preserve the sea and extract the full benefit from it, they must now moderate their demands and structure them. They must put aside ideas of the sea's immensity and power, and instead take stewardship of the ocean, with all the privileges and responsibilities that implies.*  
—*The Economist*, 1998<sup>2</sup>

\* \* \*

*There is growing recognition of the park's unparalleled potential as a place where we can expand our knowledge and understanding of marine ecosystems in northern latitudes. Today, it is significant and sobering to note that the opportunity to study a large, intact marine ecosystem—with attendant natural population structures, density and distribution of interdependent species—exists nowhere on the Pacific Coast of North America. Comparability studies in fished and unfished zones could have immense value for marine science and fisheries management in the park and Alaska.*  
— Jim Brady, Superintendent, Glacier Bay National Park & Preserve 1998.<sup>3</sup>

# Foreword

The debate over commercial fishing in Glacier Bay, which began more than thirty years ago and has been resolved only recently, was not simply one of jobs versus the environment. Interwoven within that debate were compelling philosophical, economic, biological, legal, and cultural issues.<sup>4</sup> Evolving definitions of National Park Service values were an issue, as was an understanding of the economic dependence of individuals and communities on the fisheries resources of Glacier Bay. The worldwide depletion of fisheries resources was a factor: if Glacier Bay National Park—with more than 600,000 acres of marine waters—could not be reserved from commercial fishing interests, then where? And there was the issue of jurisdiction: until the Supreme Court decided in favor of the federal government in 2005, it was disputed whether the federal government or the State of Alaska had the legal authority to regulate commercial fishing in Glacier Bay. Deeply affected by this debate was the Native culture that evolved in and around Glacier Bay, a culture that has incrementally seen its connections to Glacier Bay—the traditional “breadbasket” of the Hoonah Tlingit—eroded.

Commercial fishing in Glacier Bay predated its proclamation as a national monument (1925) by more than 40 years, and continued in the monument for more than 50 years before being seriously questioned by the Department of the Interior’s Ad Hoc Fisheries Task Force in 1978. The debate over commercial fishing in Glacier Bay grew as national environmental awareness increased, but the NPS fundamentally ignored the activity for most of the 1980s while it addressed other issues. Commercial fishing came to the forefront in 1990 when Superintendent Marvin Jensen, with the support of the Department of the Interior, began drafting regulations that would terminate commercial fishing in Glacier Bay National Park’s wilderness waters immediately and phase it out in non-wilderness waters over seven years. This coincided with, and was given impetus by, a lawsuit filed by the Alaska Wildlife Alliance that challenged the fundamental legality of commercial fishing in Glacier Bay National Park. The public reaction in Southeast Alaska to the proposed regulations was one of alarm

that led to the formation of a number of citizens’ groups. With the State of Alaska, the various groups worked for nearly a decade to eliminate or at least weaken the proposed regulations, preferably through legislation based on consensus. Numerous public meetings were held on an issue that was complex, laden with emotion, and well outside the NPS’s traditional field of expertise. Almost eight years and two superintendents after it began, the Glacier Bay commercial fishing issue was finally settled with the reluctant cooperation of Alaska’s Senator Ted Stevens, who used his considerable clout in Congress to pass compromise legislation that he termed “the lesser of evils.”<sup>5</sup>

Under the legislation and its subsequent amendment, several commercial fisheries in Glacier Bay proper were summarily eliminated with compensation while those that remained are in the early stages of being phased out. In addition to appropriating \$8 million to buy out Glacier Bay’s Dungeness crab fishermen, the legislation authorized a \$23 million compensation fund for those negatively affected by the closures and restrictions on commercial fishing in Glacier Bay. To date, though one legal challenge is outstanding, the Dungeness crab fishermen have been bought out and the compensation fund in its entirety has been distributed through a program designed and administered by the NPS with the concurrence of the State of Alaska.

This book is a history of commercial fishing in Glacier Bay proper, which lies in its entirety within Glacier Bay National Park. It covers the period from the first establishment of a commercial fishing operation in Glacier Bay in the early 1880s through 2008. To establish and maintain a context for the industry’s history in the bay, a considerable amount of historical material relating to the development and evolution of the various fisheries and processing facilities in the region is included. Much of this material is presented in six “fish reports” interspersed within the narrative.

Though not directly related to Glacier Bay, Tomie Lee, when superintendent of Glacier Bay National Park, asked that I include in this work a brief history of commercial fishing for salmon by the Hoonah seine fleet in the waters

surrounding the Inian Islands. Tlingit fishermen from Hoonah excelled at this incredibly challenging fishery, which was ended for management purposes by the Alaska Department of Fish and Game more than thirty years ago. Lee recognized the fishermen's success as a source of great local pride, and wanted to make certain this important fishery was properly documented. That history will be published as the second part to this study.

# Author's Note

Ideally, history should probably be written by impartial observers. This author has not been an impartial observer in the Glacier Bay commercial fishing issue. For more than 30 years, a lot of my life has revolved around Glacier Bay. On the recreational side, there were numerous hiking and camping trips in Glacier Bay's backcountry, the memories of which I will treasure forever.

Through my participation in the commercial fishing industry I had very strong economic ties to Glacier Bay as well. My first experience with Alaska's commercial fishing industry was in 1969, when I worked for a short while for the Alaska Department of Fish and Game measuring scallops and recording by-catch on a vessel dredging weathervane scallops in the Gulf of Alaska. I began fishing commercially in 1972, and first fished halibut in Glacier Bay in 1975 (though with little success). In 1984, looking to earn a living in Gustavus on land rather than the water, I started Point Adolphus Seafoods with my wife, Annie. Looking back, it looks like a strange time to have started a business that soon depended on Dungeness crab from Glacier Bay, where the principal crabbing grounds, the Beardslee Islands, had been designated as wilderness—ostensibly off-limits to commercial fishing—just four years earlier. I may have been naive, but I didn't lose any sleep over the fragile basis to our business. Perhaps it was because there were few other options in Gustavus.

Though there were some stressful periods and a lot of hard physical work, I enjoyed the seafood business. The fish we purchased were amazing, a product of the beautiful and bounteous environment that surrounded us. The habitat that nourished the fish we bought, particularly in Glacier Bay, was well protected, and the fisheries we depended upon were managed conservatively by the Alaska Department of Fish and Game. There were no feelings that our local industry was threatening the environment or the viability of the fisheries for future generations. And there was the pleasant routine that followed the seasons and the feeling

that we were doing something “real.” Working at the dock at Gustavus or Bartlett Cove while the sun rose was always a special treat.

We liked to refer to our business as a “microprocessor”—our production of mostly crab and halibut and salmon counted for very little in the big picture, but provided a decent living for our family in one of the loveliest places on the planet. We contributed to Gustavus's economy by giving fishermen a local market for their fish, and provided our discriminating, mostly West Coast customers with high-quality seafood that they truly appreciated.

I did not participate in any of the numerous Glacier Bay stakeholder meetings that were sponsored by the National Park Service, Alaska Department of Fish and Game, and several other groups. When legislation passed in 1998 that jeopardized the survival of our business by essentially eliminating our supply of Dungeness crab, we made our concerns known to Senator Stevens's office through numerous letters and a hired lobbyist. An attorney assisted us in filing and appealing our claim for compensation under the Glacier Bay Commercial Fisheries Compensation Program.

In the end, our business was compensated \$870,894.64. It seemed like a lot of money until we remitted more than a third of it to the IRS.<sup>A</sup>

At a social gathering during the summer of 2005, Glacier Bay Superintendent Tomie Lee casually asked me if I might be interested in writing an administrative history of commercial fishing in Glacier Bay. She gave me an idea of what she was looking for. I told her yes, that I was definitely interested, then went off and pinched myself to make sure I wasn't dreaming. I have had a long-standing interest in Southeast Alaska's history, and figured I knew a fair amount. In doing research for this project, I learned how little I really knew. Hopefully others will learn from my effort.

---

<sup>A</sup> We would have had to pay taxes on the business earnings that the compensation settlement replaced, but not at such a high rate.

## Stylistic Notes and Other Details

In keeping with the local tradition, people who catch fish, whether male or female, are referred to in this work as *fishermen*. Also, the word *fish* is used to represent both fish (e.g., salmon and halibut) and shellfish (e.g., shrimp and crab).

Reviewers of early drafts commented that it was sometimes difficult to keep the details of this complex issue in temporal order. As an aid we have included a brief timeline in Appendix A, and those who want a more detailed timeline can find it online at <http://www.nps.gov/glba/comfish.htm>.

All Tlingit artwork was created by Ken Grant, National Park Service.



# Navigating Troubled Waters:

## Part 1: A History of Commercial Fishing in Glacier Bay, Alaska

U.S. Department of the Interior

National Park Service

Glacier Bay National Park and Preserve  
Gustavus, Alaska

Author: James Mackovjak

2010





# Glacier Bay National Park

Figure 1



# Chapter 1: Early Fishing and Fish Processing in Glacier Bay

## Physical Setting

Glacier Bay National Park and Preserve is located in Southeast Alaska and is administered by the U.S. government's National Park Service, a branch of the Department of the Interior. The park encompasses approximately 3,225,284 acres, and consists primarily of mountains, ice fields, glaciers and marine waters (see Figure 1 opposite page). Much of the terrain is very severe. Within the park, Glacier Bay proper—the focus of this work—is comprised of the marine waters of Glacier Bay, including coves, bays and inlets, north of a line drawn from Point Gustavus to Point Carolus. Glacier Bay proper encompasses 326,720 acres.

Several hundred years ago, Glacier Bay did not exist. In its place was a vast glacier that flowed from the north. The glacier was in places more than 4,000 feet thick and up to 20 miles wide. It reached its maximum extent sometime around 1750, jutting several miles into Icy Strait. Climate change raised the snowline and starved the icefields that fed the glacier, causing it to begin a rapid retreat. In only two centuries the glacier retreated more than 65 miles, re-opening Glacier Bay in the process. The complex marine ecosystem that has evolved and continues to evolve in Glacier Bay is significantly dependent upon the nutrients contained in the silt-laden waters from melting glaciers that drain into the bay.

There are 762 miles of shoreline in Glacier Bay. The maximum depth of its waters is 1,200 feet. The average tidal range is about 14 feet, with a maximum of about 24 feet. Tidal currents at Sitakaday Narrows, a constriction in the lower bay, can exceed 8 knots. A dozen glaciers calve into Glacier Bay's tidewater.<sup>6</sup>

The climate of the Glacier Bay area is maritime. Summers tend to be cool, cloudy, and damp, though fairly long warm and sunny stretches are not uncommon. Winters range from moderately to severely cold, with rain or snow mixed with rain during warm spells, particularly in the lower reaches of the bay. During cold spells, pan ice often forms in protected areas of Glacier Bay. Cold spells also give rise to icing conditions that can be a hazard to mariners. Precipitation at Bartlett Cove, in lower Glacier Bay, averages 75 inches per year, a considerable portion of which falls as snow.

The fall and winter months are the windiest, though gale-force winds sometimes rake the area during spring and summer.

Glacier Bay is one of Alaska's premier tourist destinations. Steamships began regular tourist excursions to Glacier Bay in the 1880s. In recent years some 400,000 tourists visit the bay annually, the great majority on cruise ships that often accommodate more than 2,000 passengers.

## Native Fishing

The Tlingit culture of northern Southeast Alaska represents a very successful adaptation to an immensely rich but very demanding and dangerous environment. Much of Southeast Alaska's natural wealth is concentrated in its marine waters: Icy Strait with Cross Sound are said by some to be the richest bodies of water, biologically speaking, in the North Pacific. The millions of salmon that pass through and are nourished in the area are an indicator of this wealth, but they are only a small fraction of the area's immense biomass that ranges from tiny plankton to 40-ton humpback whales.

But there is a catch: to utilize this wealth required skill and toughness. The waters of Southeast Alaska are cold and unforgiving. Large tides can cause standing waves, tide rips, and currents far stronger than one can paddle against. Storms roll in regularly from the Gulf of Alaska, particularly in the fall. Gale-force winds often result in 8-foot waves. The worst situation develops when a strong wind pushes waves against a strong current. The steep waves that result often frighten modern mariners in relatively large diesel-powered boats. This condition is often experienced near current-washed headlands and in channel constrictions such as Sitakaday Narrows in southern Glacier Bay.

In this harsh environment, where a simple mistake could be the difference between life and death, the Tlingits did not lead a hand-to-mouth existence. They thrived. The accumulation of surplus wealth, often redistributed at potlatches, was intrinsic to their economy. Also, in part because they were so efficient at utilizing the resources of the sea for food, the

Tlingits had time to develop an artistic style of a quality that rivals any Native culture.

Jefferson Moser, a government official who documented the turn-of-the-century fishing industry in Southeast Alaska, said that the Natives of Southeast Alaska were “essentially fish-eating Indians.”<sup>7</sup> The most basic tool of a Tlingit fisherman was his canoe. In northern Southeast Alaska fishing canoes were hewn from a single Sitka spruce log and generally 15 to 20 feet long.<sup>8</sup> The preferred material for paddles was Alaska-cedar.

Salmon were the most important fish utilized by the Tlingits. Sockeye (red) salmon were preferred, possibly because the flesh is attractive, tasty and easily preserved by smoking or drying. Streams were owned by individual families or clans. In early post-contact times, seasonal villages were established near red salmon streams at Bartlett Cove and Berg Bay. One visitor to Southeast Alaska in 1888 observed that: “Indian houses smell as did the quarters of Jonah when he lodged within the ‘whale,’ for the reason that salmon in every stage of freshness and dryness either boils in the pot on the fire or hangs suspended from the roof.”<sup>9</sup>

Salmon fishing was a social event as well as a subsistence activity. Men did the fishing, assisted by women and children who dealt with fish once they were caught.<sup>10</sup> Salmon were caught with gaffs and beach seines and in long, basket-like wooden traps placed in streams. In 1899 Jefferson Moser recorded a location on the Bartlett River where such traps were formerly used.<sup>11</sup>

Trolling was a natural for a people who traveled regularly by canoe. The speed of canoe travel was just right for trolling, and little extra effort was required to drag a baited hook or lure behind. The reward could be a nice salmon. In 1898, Moser reported that Natives at Killisnoo (Admiralty Island) often trolled for coho and king salmon.<sup>12</sup>

Salmon were filleted and dried or smoked in sufficient quantities to provide for each family’s winter needs. Excess salmon was sometimes rendered into oil from which a sauce was made. Salmon roe was eaten fresh or dried for winter, and on occasion fermented in a pit in the intertidal zone to make a delicacy called ‘stink eggs.’<sup>13</sup>

Halibut were available year-round and were usually eaten fresh, although drying was

occasionally employed to preserve it for later use. Because halibut were available year-round, they were not generally preserved. Cleverly designed halibut hooks were carved from two pieces of wood, often Alaska-cedar, but sometimes the top piece was Alaska-cedar and the lower of another type, such as alder. The pieces were tied together and fitted with a barb of sharp bone. Sometimes an elaborate design was carved into the hook’s uppermost wooden component (see Figure 2). The hook design favored medium-sized halibut—probably the most efficient size to catch. Lines were made by women from spruce roots that were split into thread-like strips that were then braided into lines about 3/8” in diameter. Fishing was done at slack water.<sup>B</sup> The hooks were baited with fish skins or herring that were tied onto the hook, and taken to the bottom by a rock secured with a quick-release knot. A piece of wood or an inflated bladder or stomach of a seal served as a buoy. A single man in a canoe could fish a number of set lines, each with one hook. Like a bobber used by sport fishermen angling for panfish, movement of the buoy signaled that a fish was on. A quick yank released the anchor rock, and the fish was brought to the surface, clubbed, and placed in the canoe.<sup>14</sup>

Dungeness crab were speared and cooked by boiling.<sup>15</sup> Other marine organisms utilized for food by the Tlingits included cod, herring (including the roe), clams, and chitons. Kelp was also eaten.

Living in a land of plenty came to have a major peril when non-Native people encroached on it. Moser summed up the situation the Natives of Alaska found themselves in when white men decided to exploit Alaska’s rich salmon resources:

These streams ... for centuries have belonged to certain families or clans settled in the vicinity, and their rights in these streams have never been infringed upon until the advent of the whites. No Indians would fish in a stream not their own except by invitation, and they can not understand how those of a higher civilization should be—as they regard it—less honorable than their own savage kind. They claim the white man is crowding them from

<sup>B</sup> Slack water, when tidal movement is least, is generally considered to be the period beginning an hour before high or low tide and ending an hour after..



Figure 2: Traditional Tlingit halibut hook, created in Hoonah, Alaska, by George Dalton, Sr. (courtesy Bill Eichenlaub)

their homes, robbing them of their ancestral rights, taking away their fish by shiploads; that their streams must soon become exhausted; that the Indian will have no supply to maintain himself and family, and that starvation must follow... My own sympathy is with the Indian, and I would gladly recommend, if the way were clear, the establishment of ownership in streams; but it is impracticable, and I can only ask for him a consideration of his claim and, whatever law is framed, that a liberal balance be thrown in his favor.<sup>16</sup>

Other government officials were less sympathetic. George Tingle, “inspector of the salmon fisheries” for the Treasury Department, wrote in 1897 of Native rights to salmon streams:

We have in all instances impressed them with the Government’s right to control all streams, bays, and inlets where the tide ebbs and flows,

and their occupancy of a home on the banks does not, as they claim, extend their property rights over the waters, which must be maintained free, for all, under the restrictions of the law. I found in all cases the Indian had but to make the effort, as white people must, and do, in order to supply his family with all the fish they require for food, and when left without such supplies it is their own fault.

Tingle noted that canneries in Alaska had paid some 1,300 Natives about \$130,000 in 1896. He added that

Considering it is for work covering at most half the year, leaving them with the other half to hunt valuable game and otherwise provide for their families, it makes them quite independent. If you were to take out of the country the commercial companies, the living for natives would be gone and their means of existence become precarious.<sup>17</sup>

### **The Coming of Industrial Fishing: Sockeye Salmon Attract Salters and Cannerymen to Glacier Bay**

Early fish processing at Glacier Bay was focused entirely on locally-caught salmon. Pacific salmon are anadromous: they spend parts of their lives in fresh water and part in salt water. All Pacific salmon die after spawning, their decaying bodies contributing nutrients to the environment upon which their progeny will depend. Alaska hosts all five species of Pacific salmon. Early salting and canning interests were primarily interested in only one, the sockeye (*Oncorhynchus nerka*). This species was favored primarily because of the attractive red color of its flesh, and is also known as “red” salmon.<sup>18</sup>

The range of the sockeye is from northern California to Japan. The species feeds primarily on zooplankton, but it also eats small fish. Mature sockeye salmon usually weigh about four to eight pounds and spawn during the summer months. Depending on her size, the female deposits 2,000 to 4,500 eggs in a “redd” excavated with her tail in a stream or lake’s gravel. The eggs are fertilized as they are extruded, after which the female fans gravel over them with her tail to bury them for protection until they hatch in the winter. Juvenile sockeye usually spend about two years in fresh water before migrating out to sea, where they spend about two or three years before returning to their natal stream.<sup>19</sup> During the latter part of the 19<sup>th</sup> century, the Bartlett River in Glacier Bay was host to a considerable run of sockeye salmon. This fact was not unnoticed by those who endeavored to become salmon processors.

#### **Unnamed Saltery at Bartlett Cove**

Captain W. E. George, who was associated with the steamer *Idaho*, named Bartlett’s Bay (Bartlett Cove) after Charles C. Bartlett, who bought a “fishing property and claim” at that location in 1884.<sup>20</sup> An 1882 chart included in the 1883 navigational guide *Pacific Coast Pilot* shows a “fishery” located near the present-day Bartlett Cove dock (see Figure 3).<sup>21</sup> This was almost certainly a saltery, and was likely a modest facility. (A saltery on the Copper River portrayed in a 1914 government report, for example, was nothing more than a large wall tent with a wooden floor.)<sup>22</sup> This structure was likely being improved upon when travel writer Eliza Scidmore visited Bartlett Cove in 1883. Scidmore wrote: “The packing-house had

just been built, and the ship unloaded more lumber, nets, salt, barrel-staves and hoops, and general merchandise and provisions for the new station.”<sup>23</sup>

No records exist of the production at this saltery. Although some fish may have been obtained from Berg Bay or Beartrack Cove, the likely source of the saltery’s supply of fish was the Bartlett River, which then hosted an annual run of what one experienced canneryman estimated to be 75,000 to 100,000 “beautiful large red salmon.”<sup>24</sup> In 1901, government agent Jefferson Moser estimated the sockeye catch in a good season could be 50,000, but could vary considerably.<sup>25</sup> An agreement was likely made with the Native owners of the stream to pay for fish taken from the river and/or to purchase fish from Native fishermen.<sup>26</sup> At that time there were no regulations governing where fishing could occur, what type of gear could be employed, or how many fish could be caught. Barricades—semi-permanent wooden structures that concentrated salmon by blocking their further ascent up a stream—were made illegal in 1889, but there was little enforcement of the regulation.<sup>27</sup> A 1901 fishery survey of the Bartlett River, however, found no evidence of barricades.<sup>28</sup>

In preparation of their fishing effort, fishermen likely stretched a net across the Bartlett River just upstream of a location suitable for the use of a beach (drag) seine. Salmon, following their instincts to swim upstream, would become concentrated below the net. Fishing for these highly-vulnerable fish would likely occur at whatever stage of the tide that was most advantageous to the fishermen.

Beach seines were the preferred gear for catching salmon in locations such as the Bartlett River. A beach seine is a shallow net with corks along the top (“corkline”), lead weights along the bottom (“leadline”), and hauling lines at both ends. Although such nets can be fairly long, it is likely that because the Bartlett River is a relatively small stream, those employed there were on the short side.

In normal use, the seine was loaded into a boat and, with one of the hauling lines paid out by a man ashore, the boat rowed or poled away from the beach until it reached a point beyond where the salmon were schooled. The boat then turned parallel to the shore and the net was run out its full length. The boat then returned to shore with the second hauling line, and the net was then rapidly hauled until



Figure 3: 1882 map of Icy Strait and Glacier Bay showing “fishery”—likely a salmon saltery—in Bartlett Cove. (U.S. Pacific Coast Pilot, Alaska, 1883)

the fish were concentrated in the center of the net. The remaining net with its catch was then quickly hauled onto the beach.<sup>29</sup> Women and children traditionally helped with fish after they had been caught.<sup>30</sup> In 1896, fishermen in Southeast Alaska were paid \$6 to \$7 per 100 red salmon delivered to a cannery, which equals about a penny a pound.<sup>31</sup>

At the saltery each salmon was beheaded and its viscera removed. The remaining carcass was then “split” into two fillets, which involved removal of the backbone. After being washed, the fillets were salted in barrels and allowed to cure for about a week. The fillets were then

unpacked, washed and repacked with fresh salt. Arrangements were made with steamship companies to transport the pack to Seattle. A barrel was considered to contain 200 pounds of fillets.<sup>32</sup>

While the actual splitting was usually done by a man who might split on the order of 4,000 salmon in a day, much of the work—including beheading and washing salmon—was usually done by Native women.<sup>33</sup>

This saltery likely operated for only a few years. Much of the salted salmon produced at that time was exported to Japan, which had in 1875 lost a major source of its domestic salmon

production when it ceded the southern half of Sakhalin Island to Russia in the Treaty of Saint Petersburg.<sup>34</sup>

#### Bartlett Bay Packing Co.

As the major salmon runs on the Sacramento and Columbia rivers declined precipitously due to overfishing, the salmon canning industry looked to Alaska. Although Alaska possessed no individual salmon runs to match those of the Columbia, numerous smaller runs added up to make it home to the largest salmon resource in the world. The first salmon canneries in Alaska were built in 1878 at Klawock and Sitka. In 1887, the Alaska Commercial Co. (the direct descendent of the Russian-American Co.) constructed a cannery along the Karluk River on Kodiak Island. Karluk Lake, from which the river flows, was the spawning ground for one of Alaska's premier runs of red (sockeye) salmon—the only type of salmon of interest to the early canning industry. The following year, the company barricaded the river and caught virtually every red salmon that entered it—some 1.2 million fish. Over 100,000 cases of salmon (a case is equivalent to 48 one-pound cans) were packed, the sale of which yielded a tremendous profit.<sup>35</sup> Word of the company's success soon reached investors in Seattle and San Francisco, and a boom in cannery construction in Alaska ensued.

The lack of a reliable water source rendered Lester Island a marginal location. The source of some or perhaps all processing water was a small stream west of the cannery, from which a small diversion canal routed water to the cannery site.<sup>36</sup> August Buschmann, who operated a modest saltery on the same site in 1899 and 1900, said that the water available from the stream was “barely enough for our needs.”<sup>37</sup>

The Bartlett Bay Packing Co. cannery had an agent—Williams, Brown & Co. of San Francisco—that financed the salmon pack (see Figure 5). Funds were needed primarily to purchase tin plate from which cans were made, and to pay fishermen and cannery workers. Williams, Brown & Co. was also the agent for two other canneries in Southeast Alaska.<sup>38</sup> As opposed to the normal process of cans being manufactured on site, those used at the Bartlett Cove cannery during the 1889 season were transported from elsewhere, possibly Seattle. Cookers were improvised and the pack made by hand.<sup>39</sup> Natives were likely at least part of the cannery crew. An 1888 report in *Harper's Weekly* described Native women working in a Southeast Alaska cannery as “arrayed in bare feet and odiferous calico, standing in more or less slimy salt-water, mingled with souvenirs of departed salmon.”<sup>40</sup> The *Alaskan* (Sitka) reported that production that year at the Bartlett Bay cannery was 4,600 cases (about 221,000 individual cans).



Figure 4: Salmon can label, Alaska Packers Association. Pink salmon were not often canned in the early years of the Alaska salmon canning industry. (courtesy James Mackovjak)

In 1889, the Bartlett Bay Packing Co. constructed a cannery in Glacier Bay (see Figure 4). It was a makeshift affair on Lester Island, on the north shore of Bartlett Cove near the location of a Hoonah Native seasonal fishing village. It was one of only six canneries in northern Southeast Alaska.

Canning machinery, such as it was at the time, was installed for the 1890 canning season, during which some 12,000 cases (nearly 600,000 individual cans) were packed. Live sockeye salmon in the Glacier Bay region probably average about six pounds each. Since it took 65 to 68 pounds

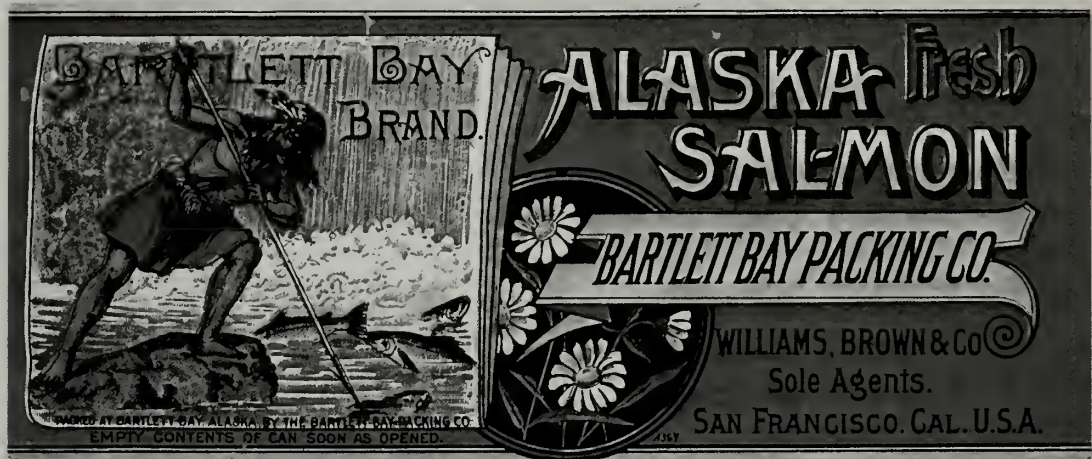


Figure 5: Salmon can label, Bartlett Bay Packing Co. (courtesy James Mackovjak)

of live salmon to make a case, 12,000 cases represented about 133,000 fish—a number that far exceeded the highest estimate of the Bartlett River’s production. The steamer *Chinook*, which had been built on the Columbia River for the Bartlett Bay Packing Co. in 1889, was used as a tender (transporter of fish) that year, and it is likely the additional salmon came from Berg Bay (on the west side of Glacier Bay) and possibly elsewhere.<sup>41</sup> Though most of the fishermen were likely Native, contracted Chinese labor was used at the cannery. The laborers apparently rioted in the fall in the belief that they were to be kept at Bartlett Cove over the winter. The riot was quelled when the steam schooner *Signal* arrived to transport 73 of the “most turbulent Chinamen” to San Francisco, where they arrived in early December.<sup>42</sup>

Prior to the 1891 canning season, the Bartlett Bay Packing Co. cannery, described by the *Alaskan* (Sitka) as a “remarkably fine piece of property,” and the tugboat *Chinook* (both owned at the time by A. B. Ford) were sold to Williams, Brown & Co. for \$40,000.<sup>43</sup> In 1891, some 7,600 cases (about 365,000 cans) were packed, the reduction from the previous year possibly due to ice clogging Glacier Bay.<sup>44</sup> That was the last year the Bartlett Bay Packing Co. operated. The demise of the cannery was the result of overproduction of canned salmon in Alaska. In 1888, the year before the cannery was built, there were a total of 17 canneries in Alaska. A year later there were 37. Production nearly doubled and inventory began to accumulate because the market could not absorb the higher level of output at prices profitable to the canneries.<sup>45</sup>

The industry’s solution to the overproduction problem was to consolidate operations into what were termed “combinations,” the largest of which became the powerful Alaska Packers Association (APA). APA grew out of the Alaska Packing Association, which organized in January 1892. The Bartlett Bay Packing Co.—even though it was idle—was among the 31 Alaska canneries that comprised its membership. Twenty-two canneries were shuttered, the result being that the Alaska canned salmon pack was reduced by half.<sup>46</sup> The Alaska Packing Association was dissolved, and in February 1893 the Alaska Packers Association was incorporated to take its place. The shuttered Bartlett Bay Packing Co. was issued 240 shares valued at \$65 per share (\$15,600, equal to about \$300,000 in year 2000 dollars). In 1894 the cannery was dismantled and torn down, likely for its lumber.<sup>47</sup> The APA was very successful. It packed 72 percent of Alaska’s salmon in 1893, and remained a major player in Alaska’s canned salmon industry until the 1960s.<sup>48</sup>

#### Icy Strait Packing Co. Saltery

The Bartlett Bay Packing Co. site was purchased in 1897 by pioneer canneryman Peter Buschmann.<sup>c</sup> With his sons, August and Eigel, Buschmann had ambitious plans to construct and operate a number of canneries and salteries in Southeast Alaska. Buschmann reportedly paid \$1,200 for the Bartlett Cove site, and intended to build a cannery that would operate as part of the Victoria, British Columbia headquartered Icy Strait Packing Co., in which he was a principal.<sup>49</sup> It was soon decided that the company’s site at Bartlett Cove would be

<sup>c</sup> In 1899 Peter Buschmann began construction of a cannery on Mitkof Island at the north end of Wrangell Narrows. The town of Petersburg, named after Buschmann, grew up around the cannery.



Figure 6: Photo of Bartlett Bay cannery taken in 1901 from aboard the U.S. Fish Commission steamer *Albatross*. The cannery had ceased operating after the 1891 season, but was used to salt fish in 1899 and 1900. (courtesy National Archives and Records Administration)

used initially to salt salmon, with a cannery to be built later. August Buschmann, who was 18 years old at the time, was detailed to supervise the salting operation for the 1899 season.

Buschmann, who remained active in the seafood industry into the mid-20<sup>th</sup> century, left a fairly comprehensive record of his activities at Bartlett Cove.

He recalled the saltery site as a string of small buildings and cabins just above the high-water mark (see Figure 6). The saltery itself was equipped with twelve salting tanks, each with a capacity of 12 barrels. There was no dock, so barrels of salted salmon were loaded by hand onto small scows and towed to deep water. The saltery was periodically serviced by the steam-powered, 34-ton cannery tender *White Wing*, which would hoist the barrels into its hold for transport to the company's main facilities at Petersburg.<sup>D 50</sup>

Buschmann's crew consisted of 40 to 50 Native men and women from Hoonah, plus three or four white men. Of his Native crew Buschmann later said that the men were "very cooperative and competent fishermen" and the women were "competent saltery helpers."<sup>51</sup> Cannery wages in Alaska at that time were \$2 per day for fishermen, \$1.50 for laborers, \$1.00 for boys aged 12 to 14, and \$0.50 for younger boys.<sup>52</sup> Saltery wages were likely similar.

Salmon were caught using beach seines. Most of the effort was in the Bartlett River, but

fishing was also done in Berg Bay. In a 1960 letter, Buschmann related a harrowing experience returning to Bartlett Cove from a fishing expedition to Berg Bay:

About once a week I used to pull [row] across Glacier Bay in a large seineboat, completely equipped with crew and seine, to a bay called Berg's Bay where there was a small salmon stream and at times we would make a good catch to augment the supply from our local stream. On one of these trips coming back from Berg's Bay with a fairly good catch of salmon we saw a very large iceberg that looked as if it was grounded in the middle of Glacier Bay. It looked as tall as the [42-story] Smith Building in Seattle, about a block in diameter, and was just about on our course home from Berg's Bay when allowing for the strong 8 to 10 knot tide running out of Glacier Bay on spring ebb tides. I decided to steer for this iceberg and run as close to it as possible since it fascinated me. It was an unusual sight and I steered as close as I thought safe to allow us to pass on the lower side of it. As we drifted by close to the berg at 8 or 10 miles per hour we got the surprise of our lives. Behind this iceberg there

<sup>D</sup> At least one government report refers to the vessel as *White Wings*.



had formed the largest and deepest whirlpool I had ever seen and small icebergs the size of large trucks or small dwellings were circling around in this whirlpool at tremendous speed and as deep as we could see. Fortunately we were just on the very outer edge of this whirlpool, or just outside, and our boat was whipped around that half circle in jig time. We were then across and outside on the opposite side before we knew it. We all looked at each other in amazement after it was all over and we finally realized what actually happened. I believe that if we had been 10 to 20 feet closer when first passing the berg we might have been drawn into the whirlpool. After that experience I have always been careful when passing close to large icebergs.<sup>53</sup>

Perhaps because it comes in the most temperate season, Independence Day may be Alaska's most celebrated holiday. The tug-of-war at the July 4, 1899 celebration at Bartlett Cove particularly impressed August Buschmann:

Our celebrations consisted of the usual sports, such as canoe races, foot races, high and broad jumps, pie eating contests, etc. and the final was a tug of war between two native teams. This took place on a cleared portion of the sand dunes above the saltery, where all our celebrations were held except the canoe races. This tug-of-war stands out as one of the toughest struggles of this kind that I have seen. The men, 6 or 7 on each side, were at this tug-of-war for almost an hour. It was very interesting and exciting since the men while digging in gradually dug deeper and deeper into the sand, until finally they were buried up to their arm pits and the 1" diameter rope used was surging back and forth in the sand. The men had become very dry and exhausted and the excited women folks stood by with coffee pots filled with water and dripped cold water on the tongues and into the mouths

of these exhausted men. The elders and I finally made them stop by calling it a draw but it was an experience never to be forgotten.<sup>54</sup>

The September 10, 1899 earthquake at Yakutat provided additional excitement for Buschmann. His account of the event:

On a beautiful summer day while sitting in our small modest log cabin dining room [at Bartlett Cove], waiting for the cook to announce lunch, I suddenly felt a very severe and unusual movement, and to my surprise I saw my trunk across the room moving toward me. I then realized we were having a very severe earthquake that lasted several minutes. The cook's helper, a boy of twelve, ran into the cabin as white as a ghost. He had been walking around in a large Indian cemetery located on top of sand dunes behind the camp and while this severe movement was on he thought the Indians buried there were coming to life. This was the worst quake I have ever experienced...

Ice broken from the glaciers by the earthquake of 1899 formed bergs as large as buildings and jammed Glacier Bay and Icy Straits almost solid, making it dangerous and almost impossible for large steamers to navigate this area for several days. For some time thereafter, steamers often made long detours to escape the many large ice floes while going to and from Juneau and other local ports to the westward. The tender *White Wing* that generally served our salting station could not push her way into Bartlett Bay for two weeks and even then with difficulty on account of floating ice.<sup>55</sup>

Production at the Bartlett Cove saltery in 1899 was 600 barrels that were each considered to contain 200 pounds of salmon, for a total of about 120,000 pounds.<sup>56</sup> In 1900 fishing for sockeye began on June 25 and ended August 7. Production was 530 barrels (about 106,000 pounds).<sup>57</sup> Between August 20 and September

30, 120 barrels (about 24,000 pounds) of coho (silver) salmon were salted.<sup>E 58</sup>

August Buschmann was busy with more than salmon during this period. During the summer of 1899, the Icy Strait Packing Co. constructed a cannery building and wharf on the south side of Bartlett Cove, near the location of the outflow of the inner lagoon. The likely reason for this location was its proximity to Alder Creek as a water supply. The wharf was usable only at high tide.<sup>59</sup> The company's plan was to install cannery equipment in the spring of 1901 and to can salmon that summer.<sup>60</sup> The cannery equipment was never installed, and the project was abandoned. Part of the reason was the area's remoteness and the problems with ice, but the major reason was that Peter Buschmann was nearly bankrupt, and in the process of selling the Icy Strait Packing Co.<sup>F</sup> It was purchased by Pacific Packing and Navigation Co., which in turn went bankrupt in 1903. Various of the company's properties, which August Buschmann thought included the Bartlett Bay saltery, were purchased by the Northwestern Fisheries Co., which also purchased the Dundas Bay cannery.<sup>61</sup>

### **Glacier Bay as a Source of Salmon, Fish Traps, and an Effort at Conservation**

A major change was taking place in the canned salmon industry around the turn of the century. While sockeye salmon remained the preferred product, markets had developed for all five species of salmon, and canneries expanded their operations accordingly. Severe overfishing lowered the production of sockeye salmon, but overall production of canned salmon increased due to the utilization of heretofore mostly ignored chums, pinks and cohos. King salmon were not often canned, but were salted or sold on the fresh market.

Although Glacier Bay after the turn of the century was without a salmon processor, its sockeye salmon resource became an important component of the production of a cannery constructed by the Western Fisheries Co. at Dundas Bay in the spring of 1900. Dundas Bay is about 10 miles west of the mouth of Glacier Bay.

The Western Fisheries Company's "Point Santa Rita cannery" was relatively small, but among the company's resources was a considerable number of vessels, including five oar-powered seine boats and two steam tugboats, the latter used to transport fishermen and their gear and to tender (transport) fish. Of the 35 fishermen employed in 1900, 26 were Natives. Some 13,800 cases of salmon were canned during that season, 6,130 of which were sockeye. Though no quantity was reported, Glacier Bay was listed as a source of some of the sockeye salmon, and may have been the source of some cohos as well.<sup>62</sup>

The total pack of salmon during the 1901 season at the Dundas Bay cannery was 21,750 cases. The total pack of sockeye is unavailable, but by August 17 some 8,000 cases of the species had been packed.<sup>63</sup> Both Bartlett Cove and Glacier Bay were listed as sources of sockeye salmon.<sup>64</sup>

Prior to the 1902 season, the Dundas Bay cannery came under the ownership of the Pacific Packing and Navigation Co. Financed by East Coast interests and organized similarly to the Alaska Packers Association, Pacific Packing and Navigation had acquired some 23 canneries in Alaska and Puget Sound.<sup>65</sup> The 1902 season was the best yet experienced at Dundas Bay, with a total pack of 29,800 cases.<sup>66</sup> The total pack of sockeye is not available, but by August 22 some 15,000 cases of the species had been packed. The source of the fish is unknown, but it is likely that a portion came from Glacier Bay. Two stationary salmon traps were employed by the cannery's new owners during the 1902 season, but were considered to be a total failure.<sup>67</sup>

Despite some problems with early designs, salmon traps quickly gained favor with cannery operators in Alaska, and would later be the Dundas Bay cannery's primary source of salmon. The traps were basically large mazes that fished round-the-clock with little labor (see Figure 7). They revolutionized salmon fishing. Traps were preferred by the canneries because they offered a means to maintain control over the cost and supply of salmon, and they even allowed the canneries to stockpile live salmon to smooth out operations.

<sup>E</sup> Buschmann would have no doubt been flattered to know that his humble operation nearly a century later would be praised on the floor of the U.S. Senate by Alaska's Senator Frank Murkowski as "one of the first great salmon salteries in Alaska."

<sup>F</sup> Despondent over his financial situation, Peter Buschmann committed suicide in 1903. His son, August, became an innovative and successful leader in Alaska's fishing industry, where he remained active until the 1950s.

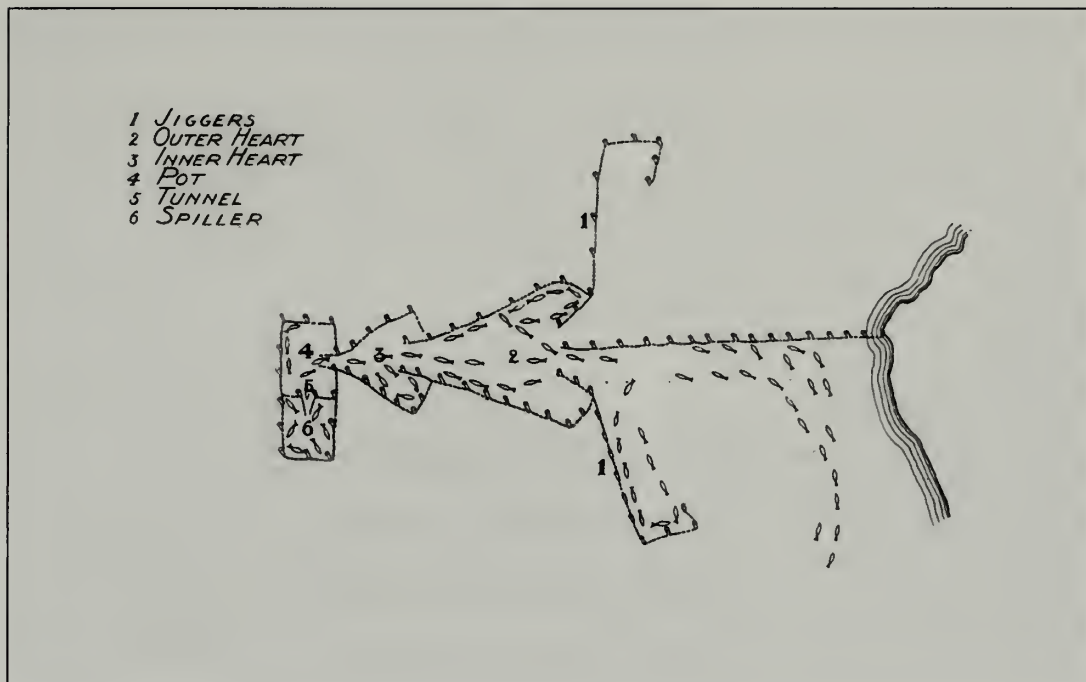


Figure 7: Early diagram of salmon pile trap similar to that installed at Pt. Gustavus. (*Pacific Fisherman*, 1903 Annual Number)

Government regulators defended salmon traps because they were stationary and thus could be easily monitored. Fishing boats, on the other hand, could surreptitiously enter a closed area, catch as many fish as they could, and leave with no one the wiser.

Fishermen hated the fish traps, which they considered unfair competition that put them out of work. Among fishermen, robbing salmon traps (often with the co-operation of unscrupulous watchmen) was considered good sport and an honorable thing to do.<sup>68</sup> The elimination of fish traps became a populist issue that figured prominently in Alaska's desire for statehood. As a state, Alaska would have the authority to outlaw fish traps.

Salmon traps had been first employed in Alaska in about 1885.<sup>69</sup> The first salmon trap in Icy Strait was established near Point Couverden in 1901 by August Buschmann.<sup>70</sup> The average annual production of salmon traps in Alaska varied, of course, with fluctuations in the numbers of returning salmon. The seasonal production among individual traps varied due to factors such as location and competition from nearby traps. Well-situated traps in exceptional seasons were known to catch in excess of half a million salmon.

The 1903 season was good as well, with a total pack of 25,400 cases.<sup>71</sup> By August 26 some 15,000 cases of sockeye had been packed.<sup>72</sup> Pacific Packing and Navigation Co.

went bankrupt after the 1903 season, however, and the Dundas Bay cannery was not operated during the 1904 season. The assets of the company were purchased in 1904 by the Northwestern Fisheries Co., which operated the Dundas Bay cannery for most years before it was permanently shuttered in 1931.<sup>73</sup>

The Bureau of Fisheries kept records of the salmon caught at Bartlett Cove for the years 1905 to 1924 (see table below). It is likely that all the salmon caught in Bartlett Cove during those years were canned at the Northwestern Fisheries Co. cannery at Dundas Bay, despite the fact that three additional canneries had been established in the Icy Strait District. Two canneries (Pacific American Fisheries and Astoria & Puget Sound Packing Co.) had relocated in 1908 from Haines to Excursion Inlet because the sockeye salmon in the Chilkat River and other Lynn Canal streams had been "fatally overfished." Both relied almost exclusively on salmon traps.<sup>74</sup> Likewise the Hoonah Packing Co., which was established at Hoonah in 1912, relied on traps. Hoonah Packing started out with four traps, which was increased to six the following year, and to 12 in 1915. In 1922, the last year Hoonah Packing canned salmon, it operated fully 25 traps.<sup>75</sup>

No commercial salmon traps were sited in Glacier Bay proper, although a number of pile traps were located along the Icy Strait

<sup>6</sup> Icy Strait was a hot bed of trap robbing. During the 1924 salmon season, cannery operators in the region organized a private patrol under the direction of the U.S. deputy marshal at Hoonah that practically eliminated trap robbing.

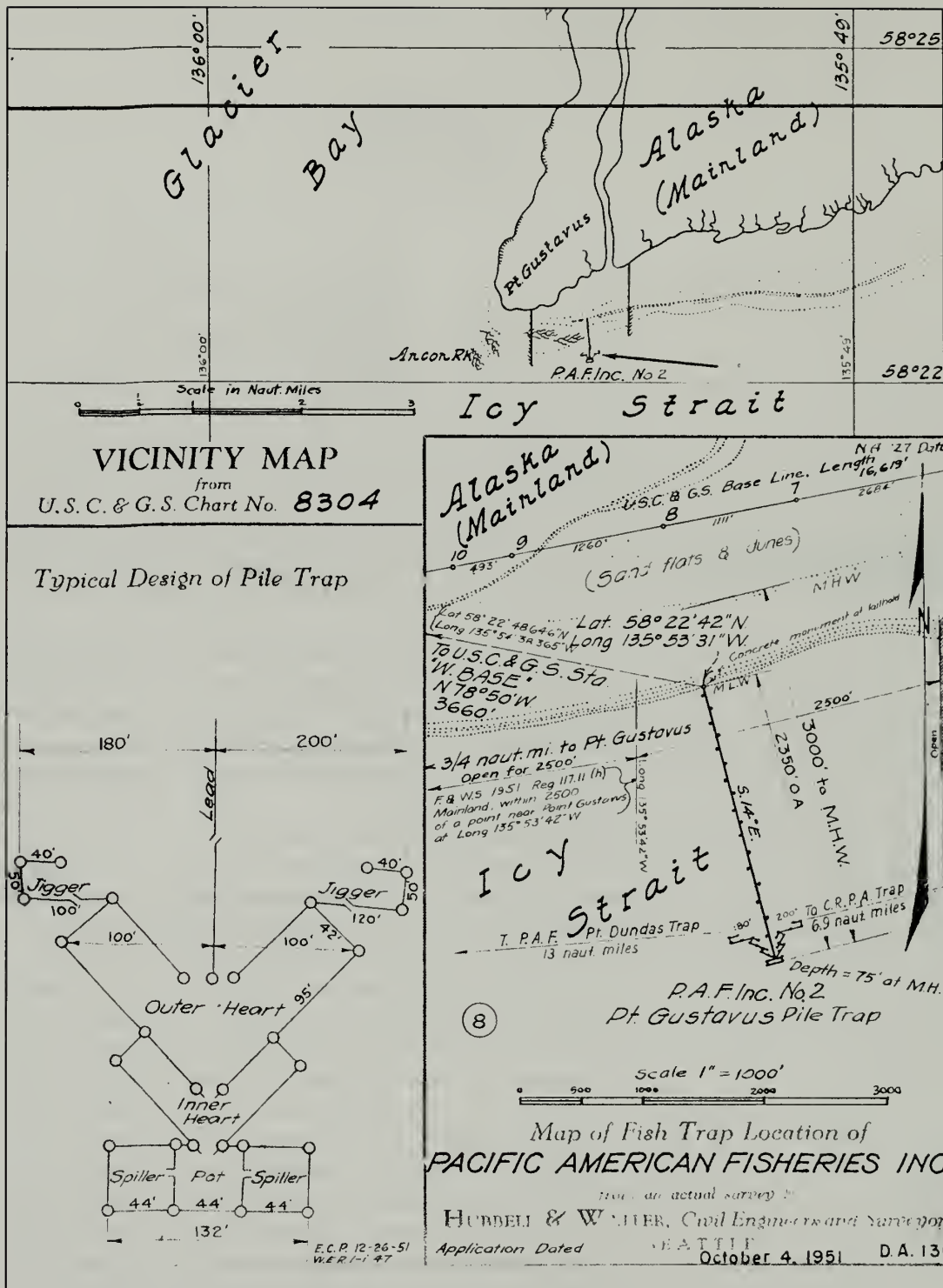


Figure 8: Diagram of what some called the "million dollar trap" at Pt. Gustavus. The trap caught a lot of valuable sockeye salmon, but was also expensive to maintain because of damage from icebergs. (Pacific American Fisheries records, Center for Pacific Northwest Studies, Bellingham, Wash.)

shore with several between the Good River at Gustavus and Point Gustavus. A floating trap may have been sited off Point Carolus in 1918, and two floating traps were operated in Dundas Bay for many years. A number of traps were eliminated in 1925 when federal regulations declared that the interval between fish traps north of 58° north latitude be a minimum of 1-1/2 miles.<sup>76</sup> More were eliminated in 1941 when the federal government limited the areas open to fish traps. One area that remained open was at Point

Gustavus, specifically "within 2,500 feet of a point near Point Gustavus at 135 degrees 53 minutes 42 seconds west longitude."<sup>77</sup> Although the trap may have been operated earlier by other interests, the Pacific American Fisheries Co. and its successors at Exursion Inlet operated the "Point Gustavus Pile Trap No. 2" from 1918 until fish traps were outlawed shortly after Alaska became a state in 1959. This trap, which was fully 2,350 feet long, was known to some as the "Million Dollar Trap"<sup>78</sup> (see Figure 8). It had the

**Table 1: Bartlett Cove Salmon Production, Numbers of Fish Caught, 1905-1924<sup>H</sup>**

YEAR	COHO	CHUM	PINK	KING	SOCKEYE	TOTAL
1905	1,546	364	208	-	9,783	11,901
1906	5,314	371	3,520	-	11,305	20,510
1907	191	-	3,404	-	7,514	11,109
1908	254	674	880	-	7,990	9,798
1909	-	-	149	-	13,334	13,483
1910	3,358	2,133	-	-	8,933	14,424
1911	5,468	-	-	-	21,191	26,659
1912	4,408	1,087	351	-	9,122	14,968
1913	317	906	4,193	-	8,729	14,145
1914	3,032	745	74	-	10,079	13,930
1915	-	1,264	3,756	-	12,256	17,276
1916	NO DATA	NO DATA	NO DATA	NO DATA	NO DATA	NO DATA
1917	-	2,172	978	-	7,015	10,165
1918	2,844	3,527	1,864	-	11,460	19,695
1919	2,201	1,167	177	48	2,965	6,558
1920	184	240	301	-	2,923	3,648
1921	NO DATA	NO DATA	NO DATA	NO DATA	NO DATA	NO DATA
1922	584	298	563	48	-	1,493
1923	-	8	336	-	2,910	3,254
1924	3,615	1	103	-	1,665	5,384

name for two reasons: (1) it caught a lot of valuable sockeye salmon, and (2) it required a lot of expensive repairs due to damage from icebergs from Glacier Bay. Gustavus Pile Trap No. 2 was officially licensed by the NPS in the 1950s. Though located at the entrance to

Glacier Bay, the trap was actually designed and sited to catch salmon migrating east along the north shore of Icy Strait.

As noted in Table 1 above, after 1918 fewer than 3,000 sockeye were caught each year. The diminished catch was considered

<sup>H</sup> There is no record of king salmon spawning in the Bartlett River. Those caught in 1919 and 1922 were likely feeders caught incidentally in Bartlett Cove by seiners or by trollers.

an unmistakable sign that the Bartlett River resource had been depleted by overfishing.<sup>79</sup>

The preservation of Alaska's salmon was the responsibility of the federal government. To that end a few laws were promulgated, but the actual enforcement effort was woefully inadequate. In 1908, for instance, the enforcement of existing salmon laws in all of Alaska was part of the duty of the three agents of the Alaska Salmon-Inspection Service (Bureau of Fisheries).<sup>80</sup> As of 1914 there had apparently not been a single conviction by a jury in Alaska for violation of fishery laws.<sup>81</sup> The attitude that persisted in the canning industry is illustrated by an observation made in a 1900 report by Howard M. Kutchin, the Treasury Department's Special Agent for the Protection of the Alaska Salmon Fisheries:

The [cannery] superintendents, as a rule, are a fine class of men, who could be trusted outside of Alaska to scrupulously observe all the requirements of good citizenship. But once they get up there, don their sweaters, and go to 'hustling' for salmon—bound to 'fill their tin' and beat their nearest competitor at any cost of effort or infraction of some inconvenient law—they seem to lay off their home characters with their home clothes.

Kutchin added that "It is my dispassionate conviction that [except for the fish wheel] every one of the forbidden practices in fishing are more or less in vogue at one or the other of the salmon fisheries." He wrote also that

It would not be just to the people engaged in salmon packing in Alaska to accuse them all of wanton contempt of law. I do not believe such to be the case. Those who would prefer to be law-abiding excuse themselves for these deplorable practices by assuming that they are forced by the principle of self-protection to do as their competitors do. And besides this, there is the common notion, often stubbornly maintained by the best of men, that the fish of the sea, the birds of the air, and the game of the woods and fields are free to all men. Experience shows that laws for

the protection of game are the most difficult of enforcement. Offenders are not regarded as exhibiting any moral turpitude, and their lawlessness is apt to be condoned by public sentiment.

Kutchin also made a very important observation: "... with the salmon packing business of Alaska there are great interests at stake, and the enforcement of the law not only affects the rights of the public, but should appeal to the permanent self-interest of the packers themselves."<sup>82</sup>

Within Alaska there was considerable concern over the depletion of the salmon fisheries. But there was little Alaskans could do: their official voice in Washington, DC was little more than an annual report of Alaska's affairs prepared by the federally-appointed governor and submitted to the Secretary of the Interior. The situation improved slightly in 1906, when Alaska was accorded an official, though non-voting, delegate to Congress. The delegate could at least make known on an ongoing basis the concerns of Alaskans.

Congress formally created the Territory of Alaska in 1912. With territorial status, Alaska gained limited self-government by an elected legislature. Among the limits Congress put on the new territory's government was a provision that the legislature was not permitted to "alter, amend, modify, [or] repeal" federal laws in certain matters. Among them were laws that pertained to fish.<sup>83</sup> Gaining territorial jurisdiction over Alaska's fisheries, nevertheless, continued to be an issue, and would ultimately prove pivotal in Alaska's long road toward statehood.

E. Lester Jones, an agent of the Bureau of Fisheries, explained the jurisdiction issue from his agency's perspective in 1915:

Any division of authority between the Department of Commerce and officials of the Territory of Alaska in administering the Alaska fisheries laws would be detrimental to the salmon and other fishery industries. It would so confuse conditions that neither the officials of this Department nor the Territory would have adequate authority. What is needed is not divided power, but the concentration of authority under

one responsible administrative department.

It is my undivided and unbiased belief that a continuation of the present investment of such authority in the Department of Commerce will be fruitful of much more real good to the fisheries of Alaska than any division of authority.

The contention of some in Alaska that the Territory can better administer its own fishery affairs is susceptible to adverse criticism because of the strife and friction between the diverse local interests that would almost inevitably follow such efforts to handle the situation. This has been the result in some States, and it is therefore my honest belief that full Federal control of the fisheries of Alaska, as impartially and honestly administered by the Department of Commerce through the Bureau of Fisheries, will result most beneficially to all interests concerned. And, furthermore, owing to the vast amount of practical and scientific knowledge and information acquired and developed during an extended period by men of unusual training and experience in the Bureau of Fisheries, any idea or thought of transferring jurisdiction over this highly important industry to another institution or board of the National Government should be dismissed at once, as such action would be a serious mistake and would prove a handicap to the greatest development of Alaska's rich fishery resource.<sup>84</sup>

In 1920 Bureau of Fisheries personnel in Southeast Alaska—a region that contained hundreds of salmon streams—included an assistant agent, four wardens, the officers and crews of three patrol boats, and a token complement of four stream guards.<sup>85</sup> The job of the stream guards was to watch the mouths of streams to prevent encroachments by fishermen into the streams and the closed areas at their mouths. The guards, however, lacked the authority to arrest transgressors or

to seize illegal gear.<sup>86</sup> The number of stream guards increased to thirty in 1922. Of those, Earl C. Bright was detailed to watch streams in Glacier Bay and Cross Sound.<sup>87</sup> Bright's detail represented the federal government's first substantial presence in Glacier Bay. In 1923 Charles E. Ferdine spent approximately 60 days guarding streams in Bartlett Cove and Taylor Bay.<sup>88</sup>

While Ferdine was busy guarding salmon streams, Southeast Alaska was hosting an important visitor: President Warren G. Harding. Harding was the first U.S. president to visit Alaska, and his entourage included his secretaries of agriculture, commerce, and interior. How and for what ends Alaska's resources were managed was causing a deep division within Harding's administration, and the men were in Alaska to see for themselves how the various federal agencies operated.

President Harding commented on Alaska's fisheries in a public address in Seattle on June 27, 1923. The fisheries, said Harding, were "the greatest Alaskan industry" and that salmon, in particular, were "an important contribution to our national food supply." He cautioned, however, that harvest levels were "too great for the good of the territory." If allowed to continue, the resource would ultimately be exhausted, leaving no basis for the industry. The fisheries, according to Harding, were imperiled by a lack of effective regulation. More restriction was "necessary and urgent."<sup>89</sup> Harding admonished Congress to act on this matter, and threatened executive action if it did not do so.<sup>89</sup>

Congress acted. To address the decline of Alaska's salmon it passed the White Act of June 6, 1924. Designed to secure a larger escapement of salmon into streams, the legislation gave the Secretary of Commerce broad powers to limit or prohibit fishing in any of the waters of Alaska, and to "fix the size and character of nets, boats, traps, or other gear and appliances used therein."<sup>90</sup> J. M. Wyckoff, a U.S. Forest Service official who spent considerable time on Southeast Alaska's waters and had a substantial understanding of the region's salmon fisheries, thought in 1928 that it was "doubtful if there is on record any other single Federal act which has done so much for the preservation of our food supply."<sup>91</sup>

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<sup>1</sup> This was President Harding's last public speech. He died several days later of natural causes.

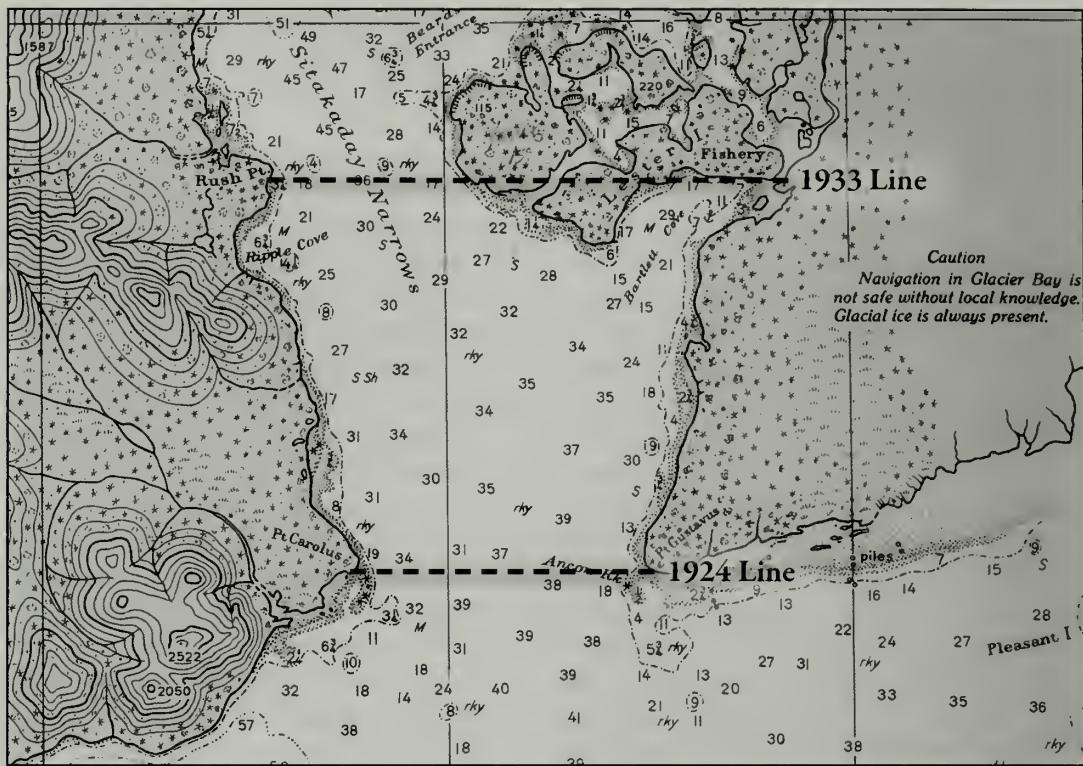


Figure 9: The White Act authorized the first regulatory lines to limit salmon fishing in Glacier Bay.

The legislation was implemented almost immediately through the use of supplemental regulations that closed fifteen areas in Southeast Alaska in which salmon runs were considered to be depleted.<sup>92</sup> Glacier Bay was one of those 15 areas, so pursuant to regulations issued on August 20, Glacier Bay in its entirety (“all waters within a line drawn from Point Carolus to Point Gustavus”) was completely closed to all types of fishing for salmon (see Figure 9).<sup>93</sup>

Though considered depleted, Glacier Bay must have retained an attraction to fishermen, because for the years 1925 through 1959 (when Alaska became a state) federal fisheries officials continued to maintain seasonal stream guards in the bay. James Russell, who was Glacier Bay’s stream guard for the years 1925 through 1927, lived aboard a launch he provided.<sup>94</sup> H. M. Wyatt, Glacier Bay’s stream guard in 1928, also furnished a live-aboard launch. Wyatt was paid \$7.00 per day, a dollar more than guards without a launch. In the years leading up to Alaska’s statehood, a one-man portable camp near the Beardslee Islands was maintained for about thirty days each season. As late as 1964, the NPS planned to detail seasonal rangers to help prevent “creek robbing” in the monument by “unscrupulous commercial fishermen.”<sup>95</sup>



## Chapter 2: Diversifying the Fisheries

### King (Chinook) Salmon: The Fish and the Fishery

In 1933, the Bureau of Fisheries amended its regulations to allow trolling for salmon in Glacier Bay.<sup>6</sup> Trollers generally target high-value salmon that are handled individually and sold for a premium. The Glacier Bay troll fishery has been and remains almost completely focused on catching king salmon.

Also known as Chinook salmon, king salmon (*Oncorhynchus tshawytscha*) are the largest of the Pacific salmon, commonly exceeding 30 pounds.<sup>7</sup> Their range extends from the central California coast around the Pacific Rim to Japan. King salmon spawn in fresh water streams during late spring and summer, with each female depositing 3,000 to 14,000 eggs in gravel “redds” excavated with her tail. The male fertilizes the eggs as they are deposited, after which the female fans gravel over them with her tail to bury them for protection until they hatch in late winter or early spring. Only 34 rivers in Southeast Alaska are known to support king salmon.<sup>7</sup> There are no documented spawning populations in Glacier Bay. Juvenile king salmon generally spend two years in the stream before migrating out to sea, where they will feed for about two to five years before returning to their natal stream to spawn and complete the cycle. While at sea, king salmon feed on a variety of fish and crustaceans.<sup>8</sup> Herring seem to be a favorite.

The king salmon caught in Glacier Bay are “feeders”—fish that are actively feeding and not enroute to their spawning stream. Feeders are considered higher quality than “spawners” because the latter have quit feeding and begun depleting their reserves of fat. Overall in Southeast Alaska, about 90 percent of the king salmon caught are of the red-meated variety (“reds”). The remaining 10 percent (“whites”) have white meat, a condition thought to be due to a genetic factor. In Glacier Bay, however, about 40 percent of the king salmon caught are of the white-meated variety, which is extraordinary. Solely because of their appearance, white-meated kings are worth less on the market than

red kings, although they sometimes command a premium in specialty markets.

Current management of Alaska’s troll king salmon fishery is by pre-established quota under the Pacific Salmon Treaty with Canada.<sup>8</sup> Traditionally, the summer trolling season begins on July 1 and ends on September 20, with king salmon fishing ending when the summer season quota was reached. The winter king season, with its own quota, traditionally began October 1 and continued until April 15, but in 1992 the opening was changed to October 11.

Troll-caught king salmon are usually sold “dressed,” (with the viscera and gills removed). The fish are dressed shortly after being caught, and either packed in flake ice or “slushed” in a thick mixture of ice and saltwater. Alaska Department of Fish and Game regulations that have been in effect for at least the last thirty years do not permit the retention of troll-caught king salmon less than 26 inches long. Though the body conformation of king salmon vary considerably, the live weight of a just-legal fish would be about 11 pounds, the dressed weight about 9 pounds.

The commercial salmon troll fishery on the U.S. West Coast began in the vicinity of Ketchikan during the winter of 1904-1905, when large schools of king salmon were observed feeding on herring. The fish were mostly located in shoal waters where nets could not be employed, and fishermen, both white and Native, began catching them from canoes by towing (“trolling”) artificial lures (usually nickel spoons) or hooks baited with herring through the water. Buyers from Ketchikan sent tenders to collect the fish, which averaged about 25 pounds in weight. The price was 50 cents each for red-meated king salmon and 25 cents for the white-meated variety. The fish were packed in ice in wooden boxes and shipped by scheduled steamer to Puget Sound ports. Total production that season was 272,000 pounds.<sup>9</sup> As well as for the fresh market, large, red-meated kings were

<sup>7</sup> The record (live weight) is 126 pounds. The largest the author knows of being caught in Glacier Bay weighed 65 pounds.

<sup>8</sup> By regulation, commercial trolling for salmon is limited to southeast Alaska, including the Yakutat area.



Figure 10: Salmon troller *Grace* in Muir Inlet, 1937. (courtesy Gustavushistory.org)

soon sought for “mild cure”—lightly salted salmon fillets that were to be smoked, mostly in Germany.<sup>100</sup>

By 1913 power boats were coming into favor for trolling, and both king and coho salmon were targeted. Government fishery managers initially looked with disfavor upon power trollers, and some advocated prohibiting them in Alaska waters. Because they trolled faster than hand trollers (at that time these were paddle or oar-powered boats), their gear was closer to the surface and tended to catch smaller, less-marketable fish than hand trollers, who fished close to the bottom where large king salmon were thought to dwell. Also, because they were unable to “play” fish, power trollers were thought to lose many hooked fish that would die afterwards. Hand trollers, on the other hand, hooked larger salmon and, because they were able to play them, lost fewer. Moreover, hand trolling was looked upon favorably by the government officials as “a fishery in which the individual of small means can find his opportunity.”<sup>101</sup> All that was required was a rowboat and troll line. This was especially important in rural Southeast Alaska, where jobs were not plentiful. Eventually all trolling boats came to be engine-powered (see Figure 10).

In 1913 the Bureau of Fisheries issued 398 hand troll permits and 34 power troll permits.<sup>102</sup> By 1925, however, power trolling produced the bulk of the catch.<sup>103</sup> In 1927 an unprecedented 45,000 king salmon were caught in Icy Strait, mostly by trollers.<sup>104</sup>

Save for a dazzling array of electronics, modern trollers are not dramatically different than those used 80 years ago. (see Figure 11) The diesel-powered vessels are usually 25 to 50 feet long and are fished by owner-operators, sometimes with the assistance of a deckhand. The vessels are fitted with outrigger-like wooden or aluminum trolling poles. Small hand or hydraulically-powered winches called “gurdies” mounted near the stern hold stainless steel trolling wire that is routed through “donuts” fastened to taglines that are in turn fastened to each trolling pole. (This arrangement keeps the lines from tangling.) At the end of each trolling wire is a lead “cannonball” usually weighing between 15 and 40 pounds. At intervals above the cannonball are snapped as many as a dozen individual leaders about six feet long and ending at a hook baited with herring or an artificial lure.<sup>1</sup>

The terms power troller and hand troller have persisted, but their connotation has

<sup>1</sup> A small electrical charge is generated on the trolling lines as the vessel passes through the water. The wrong charge will repel fish. An electronic “black box” device is often attached to the gurdis to ensure that the proper charge is maintained.



Figure 11: Modern salmon troller *Apollo*, owned and operated by Fred Howe, son of former Glacier Bay Superintendent Bob Howe. (NPS collection, Bartlett Cove, Alaska)

changed. Power trollers utilize hydraulic power to operate their gurdies, and in Glacier Bay they can use up to four trolling lines. Hand trollers crank their gurdies manually and can use two trolling lines. Some hand trollers very effectively use sport poles to catch king salmon, particularly when the fish are in shallow water.

A 1933 Bureau of Fisheries regulation that allowed trolling in Glacier Bay was amended the following year. The new regulation prohibited all commercial fishing for salmon north of 58 degrees 27 minutes 54 seconds north latitude, which was a line that ran approximately from the south end of Young Island to Rush Point on the west side of Glacier Bay (see Figure 9).<sup>105</sup> Bartlett Cove was south of this line, and thus open to salmon trolling. This regulation seems to have been ignored by trollers, and in 1941 it was changed to allow trolling for salmon in all of Glacier Bay.

Al Martin, of Hoonah, recalled that his father, James Martin, towed handtrollers into Glacier Bay with his seine boat, the *Tlingit*, in the late 1930s. Beartrack Cove and South Sandy Cove were some of the areas fished. The fishermen fished during the day and returned to the seine boat to ice their catch (with glacier ice) and eat and sleep. Their equipment was extremely simple: a rowboat and a handline.<sup>106</sup> Frank Been, superintendent of Mt. McKinley N.P. and in charge of Glacier Bay N.M., inspected Glacier Bay for most of the month of

August in 1939. He observed an “occasional” troller entering the bay.<sup>107</sup> Been spent some time at Glacier Bay during the following year, and observed at least one troller, Eli Sharclane, of Hoonah, coming out of either Glacier Bay or the Beardslee Islands.<sup>108</sup> Fishing vessels were then the chief form of transportation in Southeast Alaska, and there is no evidence that these were actually trolling.

#### **Halibut: The Fish and the Fishery**

Pacific halibut (*Hippoglossus stenolepis*) range from the Bering Sea to California. They are flat fish with both eyes on the upper side. The “blind” (underside) of a halibut is white, while the color of its upper side depends on the coloration of the ocean bottom, and ranges from olive to dark brown, with an irregular mottling of lighter color. This coloration serves to hide the fish from both predator and prey. From below, the white underside appears as the sky, while from above the fish’s coloration makes it appear to be part of the ocean bottom.

Halibut may live to be more than 40 years old; they can be more than 8 feet long and weigh more than 400 pounds. Nearly all halibut over 125 pounds (live weight) are females. The live weight of commercially caught halibut generally ranges from about 14 pounds to 200 pounds. From the author’s experience, the average live weight of commercially-caught halibut from Glacier Bay was about 38

pounds. A fish that size would have been about 12 years old.

Halibut generally spawn in deep water (100 to 250 fathoms) along the edge of the continental shelf during the winter months. The number of eggs produced by a female halibut is related to its size, and ranges from 500,000 for a 65-pound fish to 4,000,000 for a fish in the 300 pound range. Eggs are externally fertilized and develop into larvae and then small halibut while floating freely in the currents for up to six months.<sup>M</sup> Most male halibut reach sexual maturity by the time they are eight years old. For females the average age of sexual maturity is about twelve years. Until the age of about ten years, halibut are highly migratory. Older halibut are much less so, and may exhibit fidelity to a certain location.<sup>109</sup>

Halibut are voracious and very opportunistic carnivores that feed on a wide variety of fish and shellfish.<sup>N</sup> These include cod, pollock, herring, sculpin, crab, and even clams. During the summers of 1991 and 1993, the stomach contents of a total of 205 halibut caught by sport fishermen in Glacier Bay were analyzed. Only 81 had food in their stomachs, but this seemingly low number may have been due to halibut regurgitating their stomach contents in the struggle against the fishermen. Crabs were the most frequently occurring prey group.<sup>110</sup> Sculpins are very abundant in some locations in Glacier Bay, where they seem to be a favored food of halibut.<sup>111</sup>

Halibut are usually sold to processors "headed and gutted." Shortly after halibut are caught, fishermen "dress" them by removing the viscera and gills. The fish are then packed in flake ice or placed in slush ice. To prevent additional flesh from being exposed, halibut heads are not removed until the fish are delivered to a processor.

Halibut is sold fresh or frozen, mostly on the domestic market. The meat is firm, off-white in color, and contains little oil. Its relatively mild taste lends itself to use in a wide variety of dishes.

The commercial halibut fishery in Southeast Alaska began after the completion of the transcontinental Northern Pacific Railway's direct route to Puget Sound in 1888. Stocks of Atlantic halibut (*Hippoglossus hippoglossus*)

were declining due to overfishing, and to make up the shortfall on East Coast markets, Puget Sound businessmen began shipping iced Pacific halibut across the country in refrigerated freight cars. Boats tended to fish the ocean waters off Cape Flattery, Washington during the relatively calm summer months, then move to the inside waters of Southeast Alaska during the winter. The waters of British Columbia were off-limits to U.S. fishermen.

Halibut fishing was done from dories that were transported to the fishing grounds aboard schooners of various sizes (see Figure 12). The schooners generally carried from one to three dories, with two men to operate each dory. The fishing gear consisted of a buoy keg (wooden barrel), buoy line, and anchor, to which were fastened the end of a "groundline" of tarred hemp or cotton. Fastened to the groundline at approximately 15-foot intervals were 5-foot "gangions" of lighter tarred cotton line, each with a hook on the end. A section of groundline 350 fathoms (2,100 feet) in length constituted what fishermen called a "skate". Salted herring was the preferred bait.

Upon reaching the fishing grounds, the schooner would distribute its dories in favorable locations and "lie to." In fishing from the dories, one man rowed while the other tossed the buoy keg, buoy line, and anchor overboard. The attached skate of gear, with its baited hooks, was then carefully paid out. A second anchor was attached to the end of the skate.<sup>O</sup> Dorymen in northern Southeast Alaska circa 1907 usually fished five to seven skates during the summer, each of which was set twice each day. During the winter the amount of gear employed was reduced by about a third and was set only once per day.

In the course of a full-day's fishing, the gear was usually set at daybreak. It was allowed to "soak" for from one to several hours, then hauled, sometimes with the help of a "hurdy-gurdy" (small windlass). As halibut reached the surface, they were gaffed, hit on the head with a club, unhooked, and pulled into the dory. Fishermen were generally paid by the owner of the vessel on a crew-share basis, but some were paid on a per-fish basis. A representative price in 1907 was 27 cents for each fish 15 pounds and over; fish less than 15 pounds counted 3 for 1.<sup>112</sup>

<sup>M</sup> The author once caught a halibut in relatively shallow water in Glacier Bay in May that released its eggs upon being landed.

<sup>N</sup> The author once caught an 80-pound halibut that had a rock the size of his fist in its stomach.

<sup>O</sup> Often two or more skates were tied together end-to-end to form a "longline."



Figure 12: Dory fishermen with load of halibut. In Southeast Alaska during the early 1900s, halibut were usually fished from dories tended by a larger vessel. (Joe Williamson Maritime Photographic Collection, Puget Sound Maritime Historical Society, Seattle, Wash.)

The 90-foot sailing schooner *Oscar & Hattie* was likely the first commercial halibut vessel to travel to Glacier Bay.<sup>P</sup> It did so in 1888, not to fish, but rather to obtain a supply of ice, which was in those years sometimes more valuable than halibut. In the process of getting ice, the *Oscar & Hattie* broke two booms, which forced a repair stop at Sitka while enroute to the fishing grounds at Dixon Entrance, some 300 miles south of Glacier Bay.

The commercial halibut fishery in the Icy Strait region began about 1897 when a cannery steamer began fishing halibut after the salmon season had ended. The effort over the winter proved profitable, and the captain of the steamer continued fishing the following winter. Several additional steamers and a number of small sailing vessels were added to the winter fleet, and as the demand for halibut increased the fishery was expanded to all seasons of the year.<sup>113</sup>

Fishermen furnished their own ice, which, as with the *Oscar & Hattie*, was often secured from icebergs. Their catch was delivered to buying stations where it was packed in ice in wooden boxes holding 500 pounds of fish, then shipped to Puget Sound ports via the scheduled steamships that served Southeast Alaska.<sup>114</sup> Southeast Alaska's main buying sta-

tion was at Scow Bay, just south of Petersburg, which was on the main steamship route and enjoyed a supply of ice from LeConte Glacier. Smaller buying stations were scattered throughout the region. At Hoonah in 1904, S. J. Kane, manager of the Hooniah Fish Co., reported that his business was organized primarily for halibut fishing.<sup>Q 115</sup> Icy Strait was considered by the Bureau of Fisheries to be one of the "chief centers of abundance" for halibut in Southeast Alaska, with "good banks ... scattered all over" the strait.<sup>116</sup> A 1905 Bureau of Fisheries list of the principal halibut buying stations in Southeast Alaska included Hoonah.<sup>117</sup>

In addition to its value to the schooners and steamers, halibut was considered by the federal government to be "a most valuable and reliable resource for poor men."<sup>118</sup> This included white fishermen as well as Natives who, with little investment, could use hand lines to fish for halibut.

In 1905, the Bureau of Fisheries reported that Native handliners were still using traditional halibut hooks "of a very primitive but quite effective shape (see figure 2)."<sup>119</sup> Two years later the Bureau reported that Native dory fishermen in the "upper portion" of Southeast Alaska employed traditional wooden hooks that were sometimes

<sup>P</sup> John Muir, who had made Glacier Bay famous, was still exploring it two years after the *Oscar & Hattie's* visit.

<sup>Q</sup> *Hooniah* was an early alternative spelling of *Hoonah*.

elaborately carved. The hooks were fitted with a “metal tip”.<sup>120</sup>

Around 1905, sailing schooners began converting to gasoline engines. The conversion, which crowded out the steamers, was pretty much complete by 1910.<sup>121</sup> The actual fishing was still done from dories, but this too was rapidly evolving.

Stormy weather, during which it was too rough to work safely from dories, occurred often during the winter months. To gain more fishing time, halibut fishermen during the 1913 season began to abandon dory fishing in favor of fishing from power vessels of a size that could endure moderately heavy weather. With the boat running ahead, the crew, which generally ranged from four to six men, set the halibut gear over a chute on the stern. A “power gurdy,” a winch-like device that operates off the boat’s engine or an auxiliary engine and is usually mounted about amidships on the starboard side of the boat, was used to retrieve the gear. The number of skates of halibut gear fished by individual boats ranged from 12 to 70.<sup>R</sup> Skates were usually fastened end-for-end into longlines that could be miles long. The longlines were anchored and buoyed at both ends. By the mid-1920s, dory fishing was practiced by only a few vessels.<sup>122</sup>

The halibut industry in Alaska expanded so fast that by 1914 it was second only to the salmon industry. Pacific waters supplied fully 85 percent of the nation’s halibut, the bulk of which came from Alaska. Unfortunately, overfishing was taking its toll on the resource in Southeast Alaska. There were calls for closing the halibut fishery to rebuild the stocks, but a closure in Alaska without a concurrent closure in British Columbia would have left the entire market to the Canadians. The proposals were rejected as constituting an unacceptable hardship on Alaska fishermen.<sup>123</sup>

By 1923, the halibut fishery was in such a steep decline that representatives of the industry asked for international control. On March 2, 1923 the United States and Canada signed the Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean. It was the first international treaty for the regulation of a fishery, and it established closed seasons for halibut fishing. The enabling legislation specified that halibut regulations in U.S. waters would be enforced by the Coast Guard, Customs Service and Bureau of Fisheries.<sup>124</sup>

<sup>R</sup> Ca. 1915, a standard skate of gear was reduced to 300 fathoms (1,800 feet).

There was likely very little, if any, halibut fishing occurring in Glacier Bay when Glacier Bay N.M. was established in 1925. Out-of-season (illegal) fishing for halibut in Glacier Bay was reported by the FWS in 1941.<sup>125</sup>

### **Dungeness Crab: The Crab and the Fishery**

Dungeness crab (*Cancer magister*) are true (Brachyuran) crab that inhabit coastal waters from Baja California to the Aleutian Islands. The principal U.S. Dungeness crab fisheries are concentrated in Washington, Oregon, and northern California (see Figure 13).

A large male Dungeness crab may weigh four pounds; a large female less than half that. Commercial quantities of Dungeness crab are usually found in water less than 30 fathoms deep. Dungeness crab do not migrate long distances. They forage along the sea floor for a variety of organisms that live partly or completely buried in sand or mud. These include shrimp, mussels, small crab, clams and worms. Dungeness crab also scavenge recently dead fish. Dungeness crab are prey species for halibut as well as sea otters.

Male crab, which are polygamous, mate only with females who have just molted, which is usually in the early summer. A large female may carry as many as 2.5 million fertilized eggs beneath her abdomen until they hatch the following spring. Dungeness crab larvae are planktonic (float with the currents), and over about five months pass through several larval stages before metamorphosing into tiny replicas of adults. Sexual maturity is reached at about three years of age, and the estimated life span is between eight and thirteen years.

Dungeness crab are caught in cylindrical pots (traps) that are about 12 inches high and range from about 36 inches to 60 inches in diameter. The pots normally weigh between 40 and 80 pounds. The pot frames are made of ¾-inch diameter round steel stock wrapped with strips cut from rubber of the type used in inner tubes. The frame is then covered with stainless steel wire mesh woven in 2-inch squares. On opposite sides of each pot are a pair of oval entrance tunnels fitted with one-way gates (“triggers”) that close from the inside to prevent crab from escaping. Two 4 ⅜-inch inside diameter escape rings allow sub-legal male and most female crab to escape. Half of the top of the pot is hinged



Figure 13: Adult male Dungeness crab caught in Glacier Bay (courtesy James Mackovjak)

and serves as a door through which crab are removed and bait is added. The door is secured with rubber straps and hooks. To prevent lost or abandoned pots from continuing to fish, regulations require that each pot be fitted with a panel that will biodegrade after a certain period of time. Each pot is tethered individually to a marker buoy. Dungeness crab pots are usually baited with “scent” bait held in a perforated container, as well as “hanging” bait. Herring and squid are preferred scent baits, while the heads of salmon or halibut are often used as hanging bait.<sup>5</sup> Pots are set and usually allowed to “soak” for several days, depending on how good the fishing is. The best crab fishermen pay a lot of attention to small details: If a fisherman running 300 crab pots can figure out how to get one extra crab per week to walk in (or stay in) each crab pot, even at two pounds per crab the gain over a 2-month season is more than 5,000 pounds of crab. Depending on the market, that amount of crab would usually fetch between \$5,000 and \$10,000.

From the earliest years of the fishery until about 1970, most of the Dungeness crab production in Southeast Alaska was sold as canned meat. Dungeness crab today are sold

live, as “whole cooks,” cooked sections (basically half a crab, less the viscera and carapace), and (cooked) meat, either fresh or frozen. The average annual Southeast Alaska Dungeness crab harvest since 1960 has been 2.4 million pounds (live weight).

Current Dungeness crab management in Alaska is based on a “3-S” strategy. In lieu of harvest quotas, the catch is regulated by limiting seasons, and the sex and size of crab that may be kept. Additionally, the number of pots that can be fished by an individual fisherman is limited by a tiered system that ranges from 75 to 300 pots, in 75-pot increments. Under the management of the Alaska Department of Fish and Game, seasons in Southeast Alaska have diminished from being year-round to a two-month summer season (June 15 to August 15) followed by a two-month fall season (October 1 to November 30).<sup>7</sup> About 70-80 percent of the catch is made during the summer season.<sup>126</sup> Only male Dungeness crab are legal to keep, and they currently must measure at least 6.5 inches across the carapace. Typically, a legal-sized Dungeness crab will be four years old and weigh nearly two pounds. He will have molted numerous times and been sexually mature for one or possibly two years.

<sup>5</sup> At least during the 1950s and 1960s, clams from the beaches of the Porpoise Islands (in Icy Strait, east of Pleasant Island) were also used as scent bait by fishermen in the Glacier Bay area. An industrious individual dug the clams and kept them in floating live boxes, from which they were picked up by crab boats on the honor system.

<sup>7</sup> In Glacier Bay, Dungeness crab fishermen often started “stacking” gear (taking it out of the water) around the first of November because of pan ice that can form in protected areas if the weather turned suddenly frigid.



Figure 14: Women processing Dungeness crab in Hoonah, Alaska, 1961 (courtesy Floyd Peterson)

The Dungeness crab fishery in Southeast Alaska for other than local use began about 1909, when live crab were packed with seaweed in wooden boxes holding nearly 200 crab and shipped by steamer to the Puget Sound area. The crab arrived in such poor condition that the business quickly switched to shipping whole cooked crab, which were said to arrive in excellent condition. Fishermen at Wrangell at the time were paid between 75 cents and \$1.10 per dozen, depending on the size.<sup>127</sup> The industry was very modest: in 1915 fewer than 15,000 pounds of Dungeness crab were shipped from Southeast Alaska.<sup>128</sup>

The first Dungeness crab cannery in Alaska was established at Petersburg in 1921. Crab were canned in ½-pound cans of the sort used for tuna. Due to difficulties in marketing, production that first year was only 1,300 cases (48 ½-pound cans to the case). That same year the Dobbins Packing Co. constructed a floating crab cannery in Seattle and had it towed to Wrangell and then Petersburg.<sup>129</sup> Prior to the 1924 season, the cannery was towed to Hoonah where there was thought to be a “better supply of first-class crabs.”<sup>130</sup> Dungeness crab would be packed at Hoonah by a succession of operators almost continuously for nearly half a century. A substantial portion of the crab would come from Glacier Bay, and local Native women would

constitute the bulk of the work force (see Figure 14). Women who “meated” crab in the cannery were paid by the pound of meat produced. At times children were allowed in the cannery to help their mothers increase their poundage.<sup>131</sup>

The Dobbins Packing Co. seems to have failed after the 1925 season, largely due to competition from cheaper canned crab meat from Japan. The market later improved, however, and by 1932 O. H. Wood was preparing “crab products” at Hoonah.<sup>132</sup> By 1934 six companies were handling crab in Southeast Alaska, among them Alaskan Glacier Sea Foods Co., which had canneries at Petersburg and Hoonah.<sup>133</sup> Alaskan Glacier Sea Foods was listed by the Bureau of Fisheries in 1935 as being one of the “more important operators in Southeast Alaska.”<sup>134</sup> (see Figure 15)

The first regulation of the Dungeness crab fishery in Alaska was in 1935, when the season was closed for two months during the summer to protect molting crab. Such crabs are thin-shelled and vulnerable to physical damage. As well, they contain less meat than hard-shelled crab of the same size.<sup>135</sup> In 1937, regulations were introduced that prohibited the taking of female Dungeness crab or soft-shelled crab or male crab measuring less than seven inches across the shell. The season in the Icy Strait District, which included Glacier Bay, was closed from June 15 to





Figure 15: Can label, Glacier Bay brand crab meat. (courtesy James Mackovjak)

August 1 to protect crab during what was thought to be a primary molting period.<sup>U 136</sup>

Adam Greenwald, of Hoonah, recalled Dungeness crab being fished in Glacier Bay during the late 1930s. His father, Robert Greenwald, worked on the vessel *Westerly*, which tendered crab from Glacier Bay to O. H. Wood's floating crab cannery at Hoonah. Fishermen held their crab in floating live boxes anchored in the Beardslee Islands, Berg Bay and Sandy Cove, and the *Westerly* would periodically make a circuit of Glacier Bay to unload them. Each box would be lifted aboard and unloaded on deck. The pile of crab would then be covered with a tarp, which was kept wet with a saltwater deck hose until the *Westerly* arrived at Hoonah.<sup>137</sup>

In the spring of 1942 the NPS received a letter from Morris Rafn of Wrangell. Rafn was interested in the permissibility of commercial fishing for Dungeness crab in Glacier Bay N.M., as well as the possibility of locating a floating crab cannery in the monument. Frank Been, superintendent of Mount McKinley N.P. and coordinating superintendent of Glacier Bay N.M., responded to Rafn's request. His advice regarding the permissibility of commercial fishing was unequivocal: "commercial fishing in the waters of the monument is permissible to the extent that is allowed by laws and regulations of the Fish and Wildlife Service of the Department of the Interior and of the War Department."<sup>V</sup> Been advised him that the proposed cannery would require consideration, particularly its location, and the issuance of a special use permit with an expected annual fee of \$25. He ended the letter with: "I shall welcome the opportunity to be of further assistance to you."<sup>138</sup>

The wartime need for increased food production no doubt colored Been's response to Rafn's inquiry. To respond otherwise would have been unpatriotic and crosswise with

policy. There seems to be no additional record of contact between Rafn and the NPS.

Government patrols of Glacier Bay were sporadic during World War II. Most were carried out by agents of the FWS, some of whom had been deputized as NPS rangers. A patrol in December 1944 noted a single crabber in the Beardslee Islands who was in the process of picking up his pots to terminate his season.<sup>139</sup> It was about this time that processors began switching from purchasing crab by the dozen to purchasing them by the pound. In 1949, there were a total of 1,435 crab pots employed in all of Southeast Alaska, all of which were likely used to catch Dungeness crab.<sup>140</sup> Nearly 50 years later, perhaps half again as many would be set in Glacier Bay alone.

<sup>U</sup> The closure was revoked in the late 1950s.

<sup>V</sup> The U.S. Army Corps of Engineers controlled the placement of structures, such as docks, in navigable waters.

# Chapter 3: Jurisdictional Issues: The National Park Service's Role

## Glacier Bay Proclaimed a National Monument

Salmon and other fish species were of little interest to the ecologists and other scientists who hoped to see Glacier Bay's glaciers and newly-exposed lands designated as a national monument. Under the leadership of William S. Cooper, the Ecological Society of America in early 1924 "applied" for the designation of Glacier Bay as a national monument, touting the area's scenic and scientific values. Given Cooper's and the Society's terrestrial focus of glaciers and forests, both modern and ancient, it is no surprise that they did not mention the marine environment.

George Parks, an agent of the DOI's General Land Office in Alaska, wrote a 26-page response to the application.<sup>w</sup> He opposed the Ecological Society's proposal, but was comfortable with a much smaller monument in the northern reaches of Glacier Bay that was open to mining. Parks did not address fisheries resources in his response, but he did, however, express concern over how national monument status for Glacier Bay might affect cannery and fish trap sites as well as the fishing industry's need to cut timber for piling to be used in the construction of fish traps, docks, etc.<sup>141</sup>

On February 26, 1925, President Calvin Coolidge proclaimed Glacier Bay National Monument under the authority granted him by the 1906 Antiquities Act.<sup>142</sup> Born of concerns over the looting of Indian artifacts on federal lands in the West, a provision of the 1906 Act authorized the president, at his discretion, to proclaim "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest" as national monuments.<sup>143</sup> Theodore Roosevelt, who was president when the Antiquities Act became law, interpreted its provisions broadly: in 1908 he used it to proclaim some 5,000 square miles of the Grand Canyon as a national monument. In doing so he established a precedent that an object of scientific interest might be very large. The original Glacier Bay National Monument contained 1,820 square miles, not including marine waters.<sup>x</sup>

In his proclamation, Coolidge cited the accessibility of "a number of tidewater glaciers of the first rank in a magnificent setting of lofty peaks" and a great variety of forests that "should be preserved in an absolutely natural condition." The proclamation went on to state that "This area presents a unique opportunity for the scientific study of glacial behavior and of resulting movements and developments of flora and fauna..." Marine resources were not specifically mentioned, though certainly "fauna" could include marine organisms. In Glacier Bay proper, the southern boundary of the new national monument ran approximately from Geike Inlet through Beartrack Cove. Bartlett Cove was about 15 miles south of this line, and thus the monument did not include most of the waters that had been utilized by commercial fishermen.

The Antiquities Act provided no specific guidance on how the monuments would be managed on a day-to-day basis, or which bureau would manage them. Coolidge's proclamation specified that NPS would manage the monument in accordance of its Organic Act of 1916, but for years afterward, Congress provided no funds for that purpose.

Seven months after Glacier Bay National Monument was proclaimed, *Pacific Fisherman* published a "Southeast Alaska Number" that focused on the fishing industry in Southeast Alaska. The region was praised as a "homeland for fishermen" and "one of the world's greatest fish producing areas."

Quoting *Pacific Fisherman*:

In Southeast Alaska are now located approximately 120 separate fishery establishments, including salmon canneries, mild curing stations, shellfish plants, freezers, fresh fish houses, herring salteries and reduction works; and some 2,000 fishing craft of various types and sizes have their home ports in this section. It has for years held first place among salmon canning

<sup>w</sup> Parks became the Territory of Alaska's governor in 1925.

<sup>x</sup> The failure to include the calculation of acreage of marine waters in the original Glacier Bay proclamation and the 1939 proclamation that expanded the monument led some commercial fishing interests to later claim—without merit—that it was not the intent of the Presidents Coolidge or Roosevelt to include them in the monument.

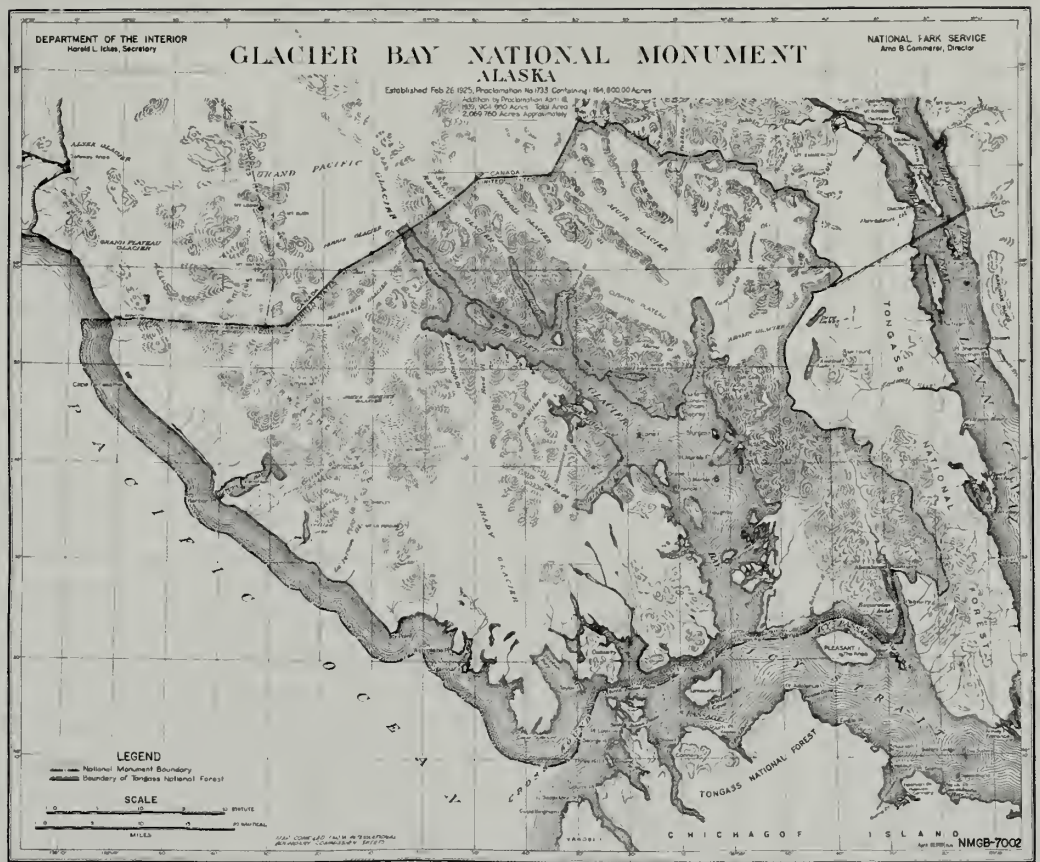


Figure 16: Map of 1939 Glacier Bay National Monument expansion. The map clearly includes the bay's waters. (courtesy Kenwood Youmans family)

districts of the world, normally producing more than half the entire pack of Alaska. Halibut fishing operations of the North Pacific are largely centered here, being served by numerous freezing and fresh-fish shipping stations. The district has also lately taken its place among the world's great herring producing areas, building up an important salting industry and a herring oil and meal business of vast proportions; and in various other fishery activities its position is one of importance.<sup>144</sup>

There was little commercial fishing occurring in Glacier Bay when Glacier Bay National Monument was proclaimed, and it is not surprising that *Pacific Fisherman* made no mention of the proclamation. Likewise there was no mention with the Bureau of Fisheries 1925 report on commercial fisheries in Southeast Alaska and the governor of Alaska's 1925 official report to the Secretary of the Interior. The following year, however, Governor George Parks, who had been appointed Alaska's governor, noted the

proclamation in his report to the Secretary of the Interior, but limited his remarks to the monument's terrestrial attributes.<sup>145</sup>

### The 1939 Expansion of Glacier Bay National Monument

On April 18, 1939, President Franklin Roosevelt, using his authority under the Antiquities Act, expanded Glacier Bay N.M. to a total of 3,850 square miles (see Figure 16). Glacier Bay proper in its entirety was now within the monument. In the proclamation no mention was made of fish or fisheries or the marine environment. Roosevelt simply cited the public's interest in reserving the "glaciers and geologic features of scientific interest" on "public lands" within the expansion. As well, the expanded areas were "necessary for the proper care, management, and protection of the objects of scientific interest" situated within the original monument lands.<sup>146</sup> The definition of what an "object of scientific interest," to be sure, was in the eye of the beholder. Certainly an unexploited marine ecosystem would be of scientific interest to most marine biologists. Nevertheless, the language was vague and would later add to confusion over the intent in

establishing and expanding Glacier Bay N.M. As with the original Glacier Bay proclamation, the area added in the expansion was previously part of the Tongass National Forest.

Opposition to the 1939 expansion of Glacier Bay N.M. by Gustavus homesteaders was the first chapter in the often sour relationship between Gustavus and the NPS. The homesteaders were upset because the expansion relegated their dozen or so homesteads that made up all of the private land in the mostly agricultural community to essentially being islands within the monument. They feared potential restrictions on grazing, and were concerned that, with no additional homesteading, the community's potential for growth and development was limited.<sup>Y</sup> A further concern was the inclusion of Bartlett Cove in the monument. Gustavus itself lacked a proper boat harbor, and the homesteaders had envisioned a future Gustavus linked by road to a harbor at Bartlett Cove. The inclusion of Bartlett Cove in the monument might preclude any development that did not serve the Park Service's needs.<sup>147</sup>

The NPS did not restrict commercial fishing in Glacier Bay. Nevertheless, a propaganda booklet written in early 1949 by fishermen who favored local control of Alaska's fisheries—and who took considerable liberty with facts—characterized Glacier Bay as a “fishing reserve of the foulest kind.” The fishermen wrote that the designation of Glacier Bay as a national monument “forced the Indian residents of Strawberry Point [an early name for Gustavus] to leave their village for other fishing grounds.”<sup>148</sup> There were at that time no Native residents at Gustavus, and no one was displaced.

The residents of Gustavus received some satisfaction in 1955, when President Dwight Eisenhower signed a proclamation that returned the Gustavus area (approximately fifteen thousand acres) and some four thousand acres of marine waters to the Tongass National Forest. A number of factors figured into his decision. Among them were requests by the territory's delegate to Congress and governor, a letter writing campaign by Gustavus homesteader Charlie Parker, and the belief by the NPS that the development that had occurred in Gustavus during the war years had dimin-

ished its suitability for national monument status.<sup>149</sup> Though there would be no further homesteading until after statehood, the land use policies of the Forest Service were considerably less restrictive than those of the NPS. Bartlett Cove remained within the monument.

### **The National Park Service and Its Mandate at Glacier Bay<sup>Z</sup>**

Protecting a vast tract of public land for aesthetic, non-utilitarian purposes was a revolutionary concept when Congress established Yellowstone, the world's first national park, in 1872. Congress did so fewer than ten years after the close of the Civil War. The park was founded during an age of rampant exploitation of public lands, an age in which society put a premium on the utilitarian. But Yellowstone National Park, with its spectacular scenery, abundant wildlife, and remarkable thermal attractions, was to be treated differently. In Yellowstone, all timber, mineral deposits, natural curiosities, and “wonders” were to be protected from “injury or spoliation,” and preserved in their “natural condition.” The function of the park was simple: it was to serve as a “pleasuring-ground for the benefit and enjoyment of the people.”<sup>150</sup> The idea proved very successful. It served as a model for nations around the world and it was followed by the development of an extensive national park system in the United States. The park system, however, would become far more than a pleasuring ground. It would become a scientifically important system of protected natural refuges in a nation many now consider overwhelmed with development.

National parks are enormously popular. The general public equates them with vacations, with beautiful, often spectacular, scenery, and with clean air and water. It should come as no surprise that of all the agencies of the U.S. government, the National Park Service receives the highest public approval. A 1995 Harris Poll nationwide survey asked adult individuals how much they supported fourteen different government services. The survey found that the National Park Service was the most popular, supported by eighty-five percent of those polled.<sup>151</sup> A cooperative study by the NPS and the University of Idaho, also done in 1995, concluded that visitors to national

<sup>Y</sup> The NPS did not restrict grazing at Gustavus, but allowed no range improvements on monument lands.

<sup>Z</sup> This discussion draws heavily from the work of Richard West Sellars, NPS historian at Santa Fe, NM. In 1997 Sellars authored *Preserving Nature in the National Parks*.

parks were “largely satisfied” with the quality of services they received. That year there were fully 273 million visitors to the national park system.<sup>152</sup> Though visits to major western parks in the contiguous United States have significantly declined in recent years, the total number of visitors to the parks overall has remained roughly static.<sup>153</sup> The popularity of the parks has often afforded the National Park Service a degree of insulation from political manipulation, though this has been less so in Alaska.

Congress established the National Park Service in 1916 as an agency within the Department of the Interior and gave it responsibility to

promote and regulate the use of Federal areas known as national parks, monuments and reservations . . . by such means and measures as conform to the fundamental purpose of the said parks, monuments and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.<sup>154</sup>

This legislation, known as the National Park Service Organic Act, remains to this day the chief point of reference for managing the country’s national parks and monuments. Most of the national parks at the time of the Park Service’s inception were “mountain” parks located in the West. Conservation of marine resources, such as those found in Glacier Bay, was not a consideration.

The key word in the Park Service’s Organic Act is “unimpaired.” Embodied in this single word is the only actual standard contained in the agency’s mandate. Unfortunately, Congress provided no exact definition of what it meant by the term. Without an exact definition, the National Park Service’s mandate is, in the words of agency historian Richard Sellars, “ambiguous and open to broad and often divergent interpretation.”<sup>155</sup> Some considered

“unimpaired” to be synonymous with the lands being retained in their “natural condition,” as was stipulated in the pioneering legislation that established Yellowstone N.P. The National Park Service’s own interpretation of the word’s meaning has evolved as environmental awareness has increased.

The Park Service’s founders interpreted the term “unimpaired” loosely.<sup>AA</sup> They were focused on the parks as tourist destinations, and assumed, given nature’s resiliency, that roads and trails, and tourist and administrative facilities were unlikely to cause serious harm. Although comprehensive ecological preservation was still in the future, management of the parks in a “natural state” was their vision.

The “Lane Letter” on national park management, signed by Franklin Lane, President Woodrow Wilson’s Secretary of the Interior in 1918, represented the first formal statement of the Department of the Interior’s interpretation of its responsibilities under the Organic Act. Horace Albright, who was instrumental in shaping the Park Service’s ideals and who actually wrote the Lane Letter, later referred to it as the Service’s “basic creed.”<sup>156</sup> The letter was considered to be the Park Service’s official policy as late as the 1970s.<sup>157</sup>

In his letter, Secretary Lane declared that the parks—our “national playground system”—were to be maintained in an “absolutely unimpaired” condition. Yet he also stated that consumptive uses, such as cattle grazing and timber cutting, could be permitted under certain conditions, and that fishing, which was aggressively promoted, would be one of the “favorite sports” in the parks.<sup>BB</sup> Additionally, Lane declared that, except as “specially authorized by law,” there would be no commercial use of the parks other than that related to the accommodation and entertainment of visitors.<sup>158</sup>

In March 1925, less than a month after Glacier Bay National Monument was proclaimed, Hubert Work, Secretary of the Interior under President Calvin Coolidge, signed what became known as the “Work Letter.” This policy statement basically reiterated—at times word for word—that of his predecessor, Franklin Lane. The word “unimpaired,” however, is not to be found in Secretary Work’s letter. Work interpreted the Park Service’s mandate

<sup>AA</sup> For the first seventeen years of its existence—until 1933—the National Park Service was, in fact, run by two of its founders, Stephen Mather and Horace Albright.

<sup>BB</sup> Though not enunciated in Lane’s letter, predators were killed in national parks as a matter of policy to protect animals favored by the public, such as deer and elk.

to be to “preserve the parks and monuments for posterity in essentially their natural state.” The Park Service’s natural resources management practice during Work’s tenure, as it had been under Lane’s and would be for decades to come, was focused on the preservation of scenery that was pleasing to the public.

In his letter, Secretary Work also noted that the federal government had exclusive jurisdiction over the parks and monuments in Alaska. That jurisdiction would keep management and enforcement matters relatively simple until Alaska was granted statehood in 1959. After that point the jurisdiction issue, particularly as it affected Glacier Bay’s fisheries, became clouded.

Louis Cramton, a Republican attorney from Michigan, served in Congress from 1913 until 1931. As a congressman, Cramton took great interest in the affairs of the national park system. In 1916, he was a member of the House Public Lands Committee, and thus a participant in the deliberations that created the National Park Service. He was later chairman of the subcommittee that controlled the Service’s budget. Shortly after leaving Congress, Cramton became a special assistant to Ray Wilbur, President Herbert Hoover’s Secretary of the Interior.

Secretary Wilbur may have harbored some uncertainty about the national parks, for in 1932 he asked Cramton to make a careful study to “determine what Congress, in initiating the park system, intended the national parks to be, and what policies it expected would govern the administration of the parks.” Preliminary results of Cramton’s study were presented in the 1932 National Park Service director’s report to the Secretary of the Interior. Germane to commercial fishing in Glacier Bay, Cramton determined that Congress in 1916 intended that:

- “The national parks are essentially non-commercial in character and no utilitarian activity should exist therein except as essential to the care and comfort of park visitors.”
- “There should be no capture of fish or game for purposes of merchandise or profit.”

But there were exceptions in which achieving the higher goal of preserving impor-

tant areas required flexibility and tolerance. Cramton explained:

National parks, established for the permanent preservation of areas and objects of national interest, are intended to exist forever. When, under the general circumstances such action is feasible, even though special conditions require the continuance of limited commercial activities or of limited encroachments for local or individual benefit, an area of national-park caliber should be accorded that status now, rather than to abandon it permanently to full commercial exploitation and probable destruction of its sources of national interest. Permanent objectives highly important may thus be accomplished and the compromises, undesired in principle but not greatly destructive in effect, may later be eliminated as occasion for the continuance passes.<sup>159</sup>

Activities such as commercial fishing, according to Cramton’s reasoning, should not preclude an area becoming a national park, but should be tolerated only as long as necessary.

Language contained in the 1978 act that expanded Redwood National Park in California, was interpreted by the NPS as a reaffirmation of the Organic Act’s statement of purpose: National parks and other NPS units were to be protected, managed and administered “in light of the high public value and integrity of the National Park System,” and in a manner that prevents the “derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directed and specifically provided by Congress.”<sup>160</sup> This was also seen by the NPS as a directive to enhance, in particular, the protection of ecological values in the park system, and led to a revision of regulations in 1983 that prohibited certain natural resource consumptive activities in parks unless specifically authorized by Congress. Among them was commercial fishing.<sup>161</sup>

The Park Service’s interpretation of its mandate, as it pertained to commercial fishing in Glacier Bay, took an unexpected turn in

1990, when the preservationist-oriented environmental groups Alaska Wildlife Alliance and American Wildlands sued the NPS over its failure to prohibit commercial fishing in Glacier Bay's wilderness and non-wilderness waters (*AWA v. Jensen*). The Department of Justice attorney representing the NPS argued successfully that the Secretary of Interior did indeed have the statutory authority to permit commercial fishing in Glacier Bay N.P.'s non-wilderness waters. In deciding the case, the U.S. District Court ruled, and the Ninth Circuit Court of Appeals affirmed, that commercial fishing was prohibited in designated wilderness, but held that congress had not statutorily prohibited commercial fishing in the non-wilderness waters of the park.<sup>162</sup> Further, the courts found that NPS had not established in regulation that commercial fishing derogates park values and purposes,<sup>CC</sup><sup>163</sup> but affirmed that Congress intended for the Secretary of the Interior to regulate commercial fishing in parks.<sup>164</sup>

The Senate 1979 report that accompanied the Alaska National Interest Lands Conservation Act (1980) provided an idea of Congress's intent when it designated Glacier Bay National Monument as a national park. The report specifically identified Glacier Bay as a park that was intended to be a large sanctuary, "where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time without the changes extensive human activities would cause."<sup>165</sup> It was well understood at the time that commercial fishing was a major ongoing activity within the monument's marine waters, though one that had done no apparent long-term damage to the area. ANILCA itself had generated a huge controversy in Alaska, and few wanted to fan the flames of the controversy by suggesting that commercial fishing should immediately be terminated in Glacier Bay N.P. An effort to end commercial fishing would be made, but only when it became politically feasible to do so.

Each national park and national monument is unique. When proclaimed, Glacier Bay National Monument, like all national parks and monuments at their inception,

reflected the nation's existing social and economic values. Those values have evolved. And they continue to do so. The evolution has been toward the public's favoring of increasingly greater ecological preservation that would result in parks that are more "pure." This evolution was slow to begin and for many years halting, but it greatly accelerated after the dramatic increase in environmental awareness that coincided with the publication in 1962 of Rachel Carson's *Silent Spring*, the book that traced the deadly path of the pesticide DDT through the food chain. The NPS's management ethos evolved as well, but in the course of doing so the sometimes reluctant and always slow-to-change agency recurrently found itself in the position of playing catch-up with the public's desire.

The Park Service's initial efforts at preservation focused on terrestrial ecosystems, which had been the subject of scientific studies that began in the 1930s. Efforts to preserve marine ecosystems followed later, with broad concern over the state of Earth's oceans helping to draw focus on the situation at Glacier Bay.

In interpreting its mandate at Glacier Bay N.P. in 1997, the NPS, in a report that discussed commercial fishing, used the term "unimpaired" to comprehensively define its goal for marine resources. Unimpaired marine resources were those in which:

- "Habitats and natural population structure and distribution of species are preserved and perpetuated;
- Natural successional and evolutionary processes occur unimpeded
- Natural biological and genetic diversity is maintained."<sup>166</sup>

More simply put, the goal of the NPS at Glacier Bay was to provide comprehensive ecological protection for the park's marine resources. They would be accorded the same protection as had become standard with the park's terrestrial resources. But only up to a point: the NPS was working to phase out commercial fishing in the park, but it would allow sport fishing to continue. Although the

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<sup>CC</sup> Ironically, in formulating its decision, the court pointed to the Park Service's own 1991 Glacier Bay proposed rule in which the agency stated that it might sanction at least some commercial fishing if it could be shown scientifically to "compatibly coexist with conserving park resources in an unimpaired state."

scale of consumptive use resulting from sport fishing is a fraction of that from commercial harvests, such a strategy was biologically inconsistent because a dead fish is a dead fish, whether caught on commercial or sport gear. Even so, however, the policy was realistic both politically and in practice, given the popularity of sport fishing in the national parks and the acknowledged fact that a phase-out of commercial fishing would take several decades.

In preserving the national park system's natural resources, the NPS views itself as striving to serve a "greater good." That goal, however, is sometimes hard to quantify and difficult to explain, particularly to those who have long been accustomed to having access to resources in the parks. At Glacier Bay, of course, that resource was fish. In its effort to terminate commercial fishing in Glacier Bay N.P. that began about 1990, the agency faced what was probably the supreme test of its ability to implement what it interpreted as its mandate in the face of intense local and political opposition.

#### **Jurisdiction over Glacier Bay's Fisheries**

Anthony Dimond, Alaska's non-voting delegate to Congress, worked very hard, though unsuccessfully, to give Alaska's territorial government control of the territory's fish and game resources. In 1937, Dimond was unsure whether commercial fishing was permitted in Glacier Bay N.M., and he inquired about the subject to the Secretary of the Interior.<sup>167</sup> He received the following response from Oscar Chapman, the acting secretary:

The Glacier Bay National Monument is under the administration of the National Park Service of this Department and it is the policy of that service to prescribe protection to all native animals within national parks and monuments. All areas supervised by that Service are wildlife sanctuaries in which hunting or capturing of animals is prohibited...

The exception is made to this general policy of wildlife protection in

that sport fishing is allowed in park areas. Thus, fish are the only form of wildlife designated for exploitation in national parks and monuments. In accordance with these regulations, fishing with nets, seines, and traps, or for merchandise or profit, or in any other way than with hook and line, is prohibited.<sup>DD 168</sup>

Fishing "for merchandise or profit" may have been illegal in Glacier Bay N.M. under NPS regulations, but regarding Dungeness crab, Bureau of Fisheries (Department of Commerce) regulations permitted commercial fishing in the Icy Strait District, which included Glacier Bay.<sup>169</sup> Regarding halibut, Glacier Bay was in Area 2 as defined by the International Fisheries Commission, the inter-governmental agency that regulated the halibut fishery pursuant to the 1923 treaty with Canada.<sup>EE 170</sup> According to that agency, Glacier Bay was open to commercial fishing for halibut.

In 1940, the Bureau of Fisheries (Department of Commerce) was merged with Bureau of Biological Survey (Department of Agriculture) to form the Fish and Wildlife Service (FWS), which was placed in the Department of the Interior. The reorganization facilitated the development of a coordinated program for the management of fisheries and other wildlife resources.<sup>171</sup> It also improved communication and coordination between fisheries managers and the NPS.

In early 1941, Ward Bower was chief of the Division of Alaska Fisheries for the FWS. Bower began work in Alaska with the Bureau of Fisheries in 1911 and probably understood the Territory's fisheries as well as anyone. He suggested that all of Glacier Bay should be open to commercial trolling for salmon. The Department of the Interior during the war years worked very hard to increase the production of seafood. In accord with his suggestion, FWS regulations were amended in March 1941 to read: "All commercial fishing for salmon, except by trolling, is prohibited in Glacier Bay north of 58 degrees 27 minutes 54 seconds north latitude."<sup>172</sup> The FWS then took the issue a step further with its sister DOI agency. Victor Cahalane, a biologist who was in charge of the

<sup>DD</sup> The actual NPS regulation, as published in the *Federal Register* on June 27, 1936 read: "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 hand, is prohibited."

<sup>EE</sup> To better reflect its mandate to study and preserve Pacific halibut, the International Fisheries Commission was later renamed the International Pacific Halibut Commission.



FWS's section on national park wildlife, sent a letter to NPS Associate Director Demaray in which he recommended that the rules and regulations of the NPS be amended to permit commercial trolling for salmon in the waters of Glacier Bay.<sup>173</sup> NPS Director Newton Drury responded that his agency concurred with Bower's recommendations (the FWS regulations were actually already in effect), and asked that, given the new fishery, the FWS increase its patrols of Glacier Bay's waters.<sup>174</sup>

In accord with those of the FWS, the NPS quickly modified its regulations to specifically allow commercial fishing in Glacier Bay N.M. not just for salmon, but for all commercial species:

36 C.F.R. (1941 Supplement)

§ 2.4(b) 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, is prohibited; except that commercial fishing in the waters of Fort Jefferson and Glacier Bay National Monuments is permitted under special regulations.<sup>FF</sup>

A second regulatory change permitted the use of bait:

§ 2.4(g) The possession of live or dead minnows, chubs, or other bait fish, or the use thereof as bait, is prohibited in all parks and monuments, except Acadia National Park, Fort Jefferson National Monument, and the areas of Glacier Bay National Monument in which commercial fishing is permitted in accordance with regulations approved by the Secretary on February 28, 1941.

Although the NPS regulatory changes were prompted by a change in the FWS commercial salmon fishing regulations, they also sanctioned the halibut and Dungeness crab fisheries that were ongoing in Glacier Bay N.M.

The regulations for commercial salmon fishing in Glacier Bay promulgated by the FWS in 1941 remained unchanged until 1966. Similarly, the NPS regulations that provided

for commercial fishing in Glacier Bay N.M. remained unchanged until 1967.

During World War II, the NPS had neither the resources nor personnel to patrol Glacier Bay N.M. In 1941, when Frank Been again toured Glacier Bay, he did so aboard the FWS vessel *Brandt*. The cruise was specially arranged by a very accommodating FWS to assist the NPS in its work at Glacier Bay. The vessel's master, James Crawford, was one of several recently appointed deputy NPS rangers. Though the FWS patrolled Glacier Bay only about twice each year, it was considerably better than the NPS had been able to manage. The deputization of FWS personnel was a way for the NPS to establish at least a small presence in Glacier Bay N.M. The arrangement was reciprocal: NPS rangers at Sitka (and perhaps elsewhere) were appointed deputy FWS agents. Been doubted the value of deputization, but thought public knowledge of it "may have a moral or retarding affect on possible violations."<sup>175</sup>

#### **Fishery Policy, More Jurisdiction Issues**

To be sure, the United States in 1942 was focused on winning a war the likes of which it had never experienced and the outcome of which was very uncertain. Food—even a luxury item such as crab—was a strategic commodity, and all, particularly government agencies, were expected to facilitate its production. Secretary of the Interior Harold Ickes made this absolutely clear.

In 1939, prior to U.S. involvement in World War II, Ickes addressed the need to increase the production of food. With conservation in mind, his goal for Alaska's fisheries was to "increase production to the highest possible level consistent with perpetuation of the supply."<sup>176</sup> Though he did not single out Glacier Bay, Secretary Ickes, acting as "coordinator of fisheries," in 1942 sounded a more urgent note: "... the fishing industry must exert every effort to increase current and future production. There is now a vital need for every possible pound of fresh, frozen, canned and otherwise preserved fishery product."<sup>GG</sup>  
<sup>177</sup> Little of that product would come from Glacier Bay. The war years, and those immediately following, saw little commercial fishing in Glacier Bay.

<sup>FF</sup> Fort Jefferson N.M. was renamed Dry Tortugas N.P. in 1992.

<sup>GG</sup> Of Alaska's salmon resource, Ickes wrote in 1942 that he did "not know where more protein food suitable for use anywhere in the world can be obtained for the same expenditure of manpower and material."

### Salmon Trap at Point Gustavus

There had been a fish trap at Point Gustavus since before Glacier Bay was proclaimed a national monument, but it was mostly ignored by the NPS after the monument was expanded in 1939. In 1950, Ranger Duane Jacobs expressed his opinion of the trap: "The most objectionable feature in regard to commercial fishing as I see it, is the fish trap (salmon) operated offshore from Point Gustavus by the Pacific American Fisheries [canning operations at Excursion Inlet]."<sup>178</sup> The trap was licensed by the Fish and Wildlife Service, the Territory of Alaska, and, because it was an impediment to navigation, the U.S. Army Corps of Engineers.<sup>179</sup> Some in the NPS thought the Service should issue a special use permit for the trap "in order that the ground used in these operations are in complete control of the Park Service for the various reasons."<sup>180</sup> Apparently there was also at least one salmon trap in Katmai N.M. that operated under an NPS special use permit. The annual fee at Katmai was \$50.<sup>181</sup> For reasons unclear, some at Glacier Bay N.M. thought a \$100 annual fee was more appropriate for the Point Gustavus trap, but Herbert Maier, acting regional director argued that

Our feeling in this connection is that in Alaska, where sentiment against Government regulation is strong, the imposition of the \$100 fee may not only be inconsistent with our schedule elsewhere but may cause irritation and animosity that may be harmful to the National Park Service objectives all out of proportion to the added revenue that would result.<sup>182</sup>

In 1952, a special use permit was issued to Excursion Inlet Packing Co. (formerly Pacific American Fisheries) for its salmon trap located at Point Gustavus. The annual fee was \$100.<sup>183</sup> The permit was renewed at least through 1954.<sup>184</sup> Federal regulations outlawed fish traps in 1959.

Objectionable or not, the NPS at Glacier Bay had for the first time officially licensed a commercial fishing operation. In doing so the agency had formally exercised its management authority over a marine area of the monument, a factor that would come into play many years later, when the State of Alaska claimed jurisdiction over the marine waters of Glacier Bay.

### Inquiry by Crab Processing Interests Fosters Serious Discussion

The Service at that time was also being asked to commit to the continuation of commercial fishing for Dungeness crab in Glacier Bay. On June 25, 1950, Ben Miller, superintendent of Sitka N.M. with responsibility over Glacier Bay, received the following inquiry from the Icy Straits Salmon Co. in Hoonah:

The Icy Straits Salmon Company is seriously considering the packing of crabs at their plant at Hoonah, beginning this fall. If the enterprise proves successful, we intend to include that operation, full scale, along with the canning of salmon.

We find that a large quantity of crabs, previously furnished to Parks Canning Company, and the Woods Cannery, came from the Glacier Bay and Dundas Bay areas. There seems to be some discussions as to whether the taking of crabs would be allowed, after this fall, in those two areas...

Your early advice will be greatly appreciated, for the determining of the available fishing grounds will have a decided bearing upon the plans we are to make.<sup>185</sup>

The exchange among top NPS and FWS officials over the following months was likely the first comprehensive discussion of how difficult an issue commercial fishing in Glacier Bay N.M. was. No matter how great the desire of the NPS officials to administer Glacier Bay as they thought befit a national monument, political realities in Alaska made them hesitant to do so.

Though current NPS regulations specifically allowed commercial fishing in Glacier Bay N.M., Miller responded that he was not in a position to answer their question, and said he would forward the request to the NPS regional office in San Francisco.<sup>186</sup> With the forward, however, Miller sent his personal, preservation-oriented recommendation, which started the discussion:

It is my recommendation that all types of commercial fishing, including crabs, be barred from Glacier Bay National Monument. I realize that

this is a very delicate situation and will undoubtedly (sic) bring considerable adverse criticism to the Service, however, I feel it is in keeping with National Park Service policy to bar commercial enterprises from the areas. I feel that the protection of sea life under the water comes under the same category as the protection of wildlife on the land surface.<sup>187</sup>

Sidney McClellan, NPS attorney at the regional office, infused some reality into Miller's recommendation:

As you are probably aware, some of the waters at Glacier Bay are already open to commercial fishing, and Al Kuehl [a NPS landscape architect who specialized in Alaska issues] feels that there will be strong protest if we prohibit the taking of crabs from waters that are open to commercial fishing—but, of course, we wish to go as far as we can to prohibit further commercial operations.<sup>188</sup>

Lowell Sumner, an NPS biologist who later became a leader in the environmental community, was also involved in the discussion. Sumner added:

Of course we feel that the trend is against such commercial activity and should be. But we agree with Kuehl that we might not be able to cope with the protests.

Therefore we suggest allowing crab taking, but only in a designated part of the Monument. Some day, perhaps in 10 or 15 years, it should be eliminated altogether...

Without a map I can't suggest an exact boundary line but feel no crab taking should be permitted north of a certain line in the main bay. Perhaps a line from Bartlett Cove west to corresponding cove on the opposite side... Should protect crabs in Sandy Cove...

This situation is more political than biological in its complications. Kuehl, who knows the local situation, can judge how far we can go with restrictions at this time, when

the Hoonah native question is slumbering but likely to flare up, and statehood is another unstable factor. I think we need a public relations man up there for a considerable period before we can make many restrictive changes.<sup>189</sup>

The NPS at Sitka and Glacier Bay did not contemplate any hasty action. The Service would "assemble and weigh all the facts carefully, and try to determine what effects closure of certain waters would have on the fishing economy of the neighboring areas." Ranger Duane Jacobs, who occasionally patrolled Glacier Bay, wrote that the Service "should proceed very carefully in the curtailment of fishing rights in monument waters, and yet stand firm against any new rights they may request, particularly if they involve a type of construction or building."<sup>190</sup>

The FWS was also involved in the discussion. C. Howard Baltzo, assistant regional director, said the Glacier Bay commercial fishing issue had given his agency "considerable food for thought," and believed it might "reach into a higher policy." To discuss the issue further, a November meeting in California between the NPS and the FWS was suggested.<sup>191</sup> The meeting on the "respective authorities of the Fish and Wildlife Service and the National Park Service to regulate fishing within Glacier Bay National Monument" was held on November 13, 1950.

Several days after the meeting, Herbert Maier, NPS assistant regional director, sent a letter to the Icy Straits Salmon Co.:

A discussion of commercial fishing was held between representatives of the Park Service and representatives of the Fish and Wildlife Service in this office on November 13. The question of crab fishing within Glacier Bay National Monument was discussed, and no change was recommended regarding the crab fishing situation within the monument.

Accordingly, you are advised that the present plan is to permit the taking of crabs at Glacier Bay during the coming season.<sup>192</sup>

Donald Chaney, chief counsel for the FWS, later summarized his agency's position

on the issue, including a key acknowledgment of the NPS's jurisdiction:

It is quite clear that the Alaska fishery laws and regulations issued pursuant thereto are applicable throughout the Territory, even though certain areas also may be subject to regulation by some other agency. At the same time, it is clear that the National Park Service also may adopt regulations further restricting fishing within Glacier Bay National Monument.

Chaney added that the Secretary [of the Interior] should not be requested to permit fishing by means of one set of regulations and to restrict fishing at least in given areas by means of another set of regulations. Therefore, it is suggested that the requirements of the National Park Service for closed seasons or closed areas, or similar restrictions, very well may be recognized in the Alaska commercial fishery regulations...<sup>193</sup>

Arthur Demaray, director of the NPS, agreed with Chaney, and thought the matter could and should be worked out through cooperation between the agencies.<sup>194</sup> C. E. Persons, an acting assistant regional director, agreed that any new regulations pertaining to commercial fishing in Glacier Bay should be agreed to jointly by the NPS and FWS.<sup>195</sup>

Though no such regulations were ever negotiated, the NPS in late 1951 felt it had the support of the FWS: as NPS Ranger Duane Jacobs noted, "I have looked upon the Fish and Wildlife Service as a good and powerful friend to have on our side, and feel sure they would modify commercial fishing zones in the monument when and if they conflict with monument purposes, thereby relieving this Service of that burden, which we are not equipped to handle."<sup>HH</sup> <sup>196</sup> In early 1952, however, the NPS acknowledged the FWS's fundamental jurisdiction in Glacier Bay, and its belief that it would be "difficult or impossible to persuade the FWS to abandon its jurisdiction over Glacier Bay,"

and that it would be "equally difficult or impossible to abolish commercial fishing therein."<sup>197</sup>

The issue of commercial fishing in Glacier Bay had been considered at the top level of the NPS, but the perceived lack of complete jurisdiction over the fisheries resources of Glacier Bay, coupled with a lack of resources for management and enforcement activities, and an understanding that the elimination of commercial fishing from Glacier Bay would be politically difficult or impossible, led the agency to accept the status quo. More than a quarter century would pass before the Service would again seriously question commercial fishing in Glacier Bay.

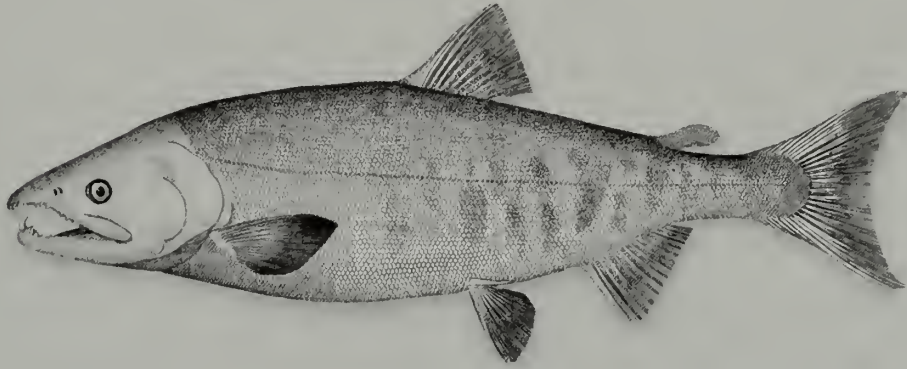
To be sure, there were other issues at hand, chief among them the need for the NPS to accommodate the dramatic postwar increase in visitation to the national parks. In 1956, the NPS initiated Mission 66, a 10-year effort focused on the need to accommodate anticipated national park system visitors in 1966, the Service's golden anniversary.<sup>198</sup> The principal goal of Mission 66 at Glacier Bay N.M. was to construct a visitor center, dock facilities, and administrative infrastructure at Bartlett Cove. Leone J. Mitchell was appointed superintendent of Glacier Bay N.M. in 1958, and most of his energy was focused on the development at Bartlett Cove.

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<sup>HH</sup> Regarding enforcement of NPS regulations at Glacier Bay in 1952, Ben Miller, Superintendent of Sitka National Historical Park and Glacier Bay National Monument, wrote that because of the "lack of funds and adequate equipment," the lone ranger assigned to protect Glacier Bay's "vast expanse of land and water" was "about as effective as one man trying to subdue a large forest fire with a shovel and a bucket of water."

# Fish Report No. 1:

Commercial Fishermen—Pelican Cold Storage—King Salmon—Halibut—  
Dungeness Crab—Sharks—Gustavus Homesteader Fishermen—Harbor  
Seals—Shrimp



## Commercial Fishermen

The *Economist* magazine characterized commercial fishermen as the “last race of hunter-gatherers.”<sup>199</sup> Often far from home, they work a hard, dangerous, and sometimes lonely job in which little is certain: weather can change unpredictably for the worse and stay bad for days. As well, machinery can fail at critical times, markets can be fickle, fish stocks can fluctuate dramatically, and the regulations that govern individual fisheries can be modified for a host of reasons. Local knowledge—where and when to fish, where to anchor, the effect of tidal currents on sea conditions, and a host of other information—is very important and accumulated mostly through experience.

Kevin Schade, a Juneau-based power troller who fished alone, illustrated the temperament and courage it takes to be a fisherman. He approached me late one fall and said that he planned to fish in Glacier Bay and was looking for a market for the king salmon he might catch. By that time almost everyone else had quit fishing. With little other fishing effort in the region, any fish he caught would be easy to sell. But Schade was taking a gamble. It was dangerous enough to be in Glacier Bay late in the season, but it was more so to be alone. Even the smallest mishap could prove fatal. The weather could quickly turn dangerous, with gale or even storm-force winds and temperatures that could drop to below zero. Another issue was his boat: though decently-maintained, the double-ender *Maria* was of wood and very old. And it was one of the few power trollers still powered by a gasoline engine. As well as being less efficient than diesel engines, gasoline engines are less reliable and considerably more prone to fires. In the best of conditions, help would be several hours away, providing he could contact someone. And the days were short and getting shorter. Nevertheless, Schade was careful, perhaps a little lucky, and did pretty well. There were a few fish still around and we looked forward to his radio call every five days or so asking us to meet him at the dock at Bartlett Cove. We appreciated getting the fish almost as much as we appreciated knowing that Schade was safe. For him the whole venture was nothing special, just what fishermen do.

Commercial fishing is not just an occupation, it's a way of life. As the Scottish novelist

and poet Walter Scott said: “It's not fish you're buying. It's men's lives.”

## Pelican Cold Storage

During the 1930s, fish buyer Kalle Raatikainen was based in Sitka and owned the tender *Pelican* as well as several buying scows. Raatikainen bought troll-caught salmon on the grounds as far north as Deer Harbor, on Yakobi Island. The trolling fleet had been gradually moving northward, and he conceived the idea of building a cold storage (freezer plant) in the area. Raatikainen turned his idea into a plan. He chose a site along Lisianski Inlet on Chichagof Island for the future cold storage because of its hydroelectric potential and its proximity to the fishing grounds. The location was named Pelican, after Raatikainen's boat, and the new company would be called Pelican Cold Storage (see Figure 17).

In August 1939, Raatikainen traveled to Seattle, where he ordered construction materials for his project, much of it from the Weyerhaeuser Timber Co. The following month, the material was shipped north on the Alaska Transport Co.'s steam schooner, *Tongass*. Alaska Transport was owned by Norton Clapp, a Tacoma, Washington businessman whose family also owned a considerable interest in Weyerhaeuser. Upon the vessel's arrival at Pelican, Raatikainen was presented with a bill for the materials. The bill totaled in the thousands of dollars, and the vessel's master was instructed not to unload any of the cargo until it was paid. Raatikainen could not pay the bill: his liquid capital at the time was only several hundred dollars. The situation was complicated by the fact that the *Tongass* was scheduled to pick up a load of frozen fish and canned salmon for transport to Puget Sound, but could not do so until the Raatikainen's cargo was unloaded. Arrangements for getting the *Tongass* unloaded and on its way were negotiated via radio, and when the vessel left Pelican, Raatikainen was in debt to Norton Clapp. Clapp later exchanged the debt for \$50,000 in Pelican Cold Storage stock.<sup>200</sup> The Clapp family eventually came to own Pelican Cold Storage.

The construction of Pelican Cold Storage was shrouded in wartime secrecy, and may have received some priority for labor and materials as a potential producer of food for the war effort.<sup>11</sup> The company did contribute to

<sup>11</sup> As “Fishery Coordinator” during World War II, Harold Ickes, who was also Secretary of the Interior, consolidated salmon canning operations in Alaska to make them less demanding of labor and material.



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the war effort by providing refrigerated storage for the Army base at Excursion Inlet. Preliminary fish processing operations began in 1943, and the plant was completed in 1944. Pelican Cold Storage was capable of freezing 100,000 pounds of fish per day, with a frozen storage capacity of 4,000,000 pounds. In 1944 the community built around the cold storage was incorporated as a first-class city, complete with post office.<sup>201</sup> Production at Pelican Cold Storage in 1945 was some seven million pounds.<sup>202</sup>

Several years later Pelican Cold Storage expanded its operations to include the processing of Dungeness crab through a merger

with a small company in Hoonah owned by Prosper Ganty. Ganty was a businessman from Sitka who shortly after World War II purchased Bill Smith's Coastal Glacier Seafoods Dungeness crab canning plant in Hoonah.<sup>203</sup> He soon renamed the operation the P. S. Ganty Co. In late 1948 or early 1949, the company merged into Pelican Cold Storage. Ganty had known Norton Clapp since World War II, when they served together at the army facility at Excursion Inlet. Clapp had great faith in Ganty's knowledge of the commercial fishing industry in Southeast Alaska, and made him president of the company.<sup>204</sup> Ganty managed Pelican Cold Storage's operations until he

Figure 17: Pelican Cold Storage advertisement in *Fisherman's News*, 1971.

was succeeded by Jim Ferguson in 1969.<sup>205</sup> Pelican Cold Storage would become for many years the principal buyer of Dungeness crab from Glacier Bay. As well, the company would purchase considerable quantities of halibut and Tanner crab.

The first vessel ever built at Pelican was 57 feet long and designed to fish halibut. It was completed in 1949 and christened, perhaps auspiciously, *Glacier Bay*.<sup>206</sup>

### King Salmon

Assistant Chief Ranger Duane Jacobs reported in 1950 that salmon fishing in Glacier Bay proper was “mostly confined to trolling.”<sup>207</sup> The following year Supervisory Park Ranger Oscar Dick, who spent some time at Glacier Bay, reported that “to the best of my knowledge,” there was no salmon fishing done in Glacier Bay proper.<sup>208</sup>

In 1958, John Hinchman, of Hoonah, bought the seine boat *Yankee*. Before and after the seine season (sometimes as late as Thanksgiving), Hinchman would transport about eight or nine skiffs, some of which were equipped with outboard motors, into Glacier Bay to troll for king salmon. Some of the skiffs were placed on deck while others were towed. Favored fishing locations were Fingers Bay, Garforth Island, Russell Island, Tidal Inlet, and Queen Inlet. As with James Martin’s operation during the late 1930s, the seine boat would be used as a base of operations where the fishermen ate, slept, and kept their fish. Each fisherman had a bin or tote in which to ice his fish. As with earlier efforts, the ice came from icebergs.<sup>209</sup>

There were several other seine boats that were involved in similar operations. Floyd Peterson, of Hoonah, recalled making several trips to Glacier Bay in the dead of winter with Frank Wright (also of Hoonah) on the *Mary Joanne*. Leo Houston’s *Ocean Queen* also supported a small hand troll operation in Glacier Bay.<sup>210</sup>

### Halibut

Though no quantitative data was available to back up the assertion, in 1951 the NPS reported that the waters around Willoughby Island were “fished extensively” for halibut.<sup>211</sup> The agency reported that an “excellent catch” of halibut was taken from Glacier Bay during the 1952 season. Most of the fishing was done between the mouth of Glacier Bay and the

north end of Willoughby Island by small vessels with crews of three or four men.<sup>212</sup>

Bruce Black, an NPS ranger stationed at Sitka who patrolled Glacier Bay during the summers of 1953 thru 1955, recalled a vessel fishing halibut in 1953. He did not remember the name of the vessel, but said it was not from Hoonah. The following year the same vessel was anchored at Bartlett Cove several days before the halibut season was to open. The morning before the opening, Glacier Bay was cloaked in dense fog. Apparently the vessel was getting an early start on the season, because from his cabin on Lagoon Island Black could clearly hear halibut gear being set. The fog, however, prevented him from investigating further. Black had no law enforcement training and was unsure of the statutes, but, given the opportunity, said he would have talked to the fishermen and recorded the incident.<sup>213</sup>

In the 1960s, nylon began replacing hemp and cotton for groundline and gangions. Nylon is stronger and, unlike its natural counterparts, does not rot, and so requires less maintenance. Of great importance also was the introduction of snap-on gear. With snap-on gear, rather than the gangion being permanently spliced into the groundline, it was fastened with a metal clip, usually of galvanized or stainless steel. This allowed the gangion, with its baited hook, to be “snapped” onto the groundline as it was being paid out, and snapped off as the gear was retrieved. Though usually less efficient than traditional “stuck” gear in the hands of experienced halibut fishermen, snap-on gear made it easier for vessels designed for other fisheries to participate in the halibut fishery. This was especially true of gillnet boats, which were fitted with a large hydraulically-driven drum to hold the net. The net could easily be replaced with groundline for fishing halibut.

The result of these improvements in longlining technology was to facilitate the entry of additional fishermen into the halibut fishery. Crowding on the grounds became an issue, particularly when the price of halibut began trending upwards in the 1970s. During the 1970s, the International Pacific Halibut Commission adopted a regulation that prohibited commercial fishermen from keeping halibut less than 32 inches long. The live weight of a 32-inch fish would be about 14 pounds. Around 1982, the traditional “J” hooks used in the halibut fishery were replaced by circle hooks (see Figure 18:



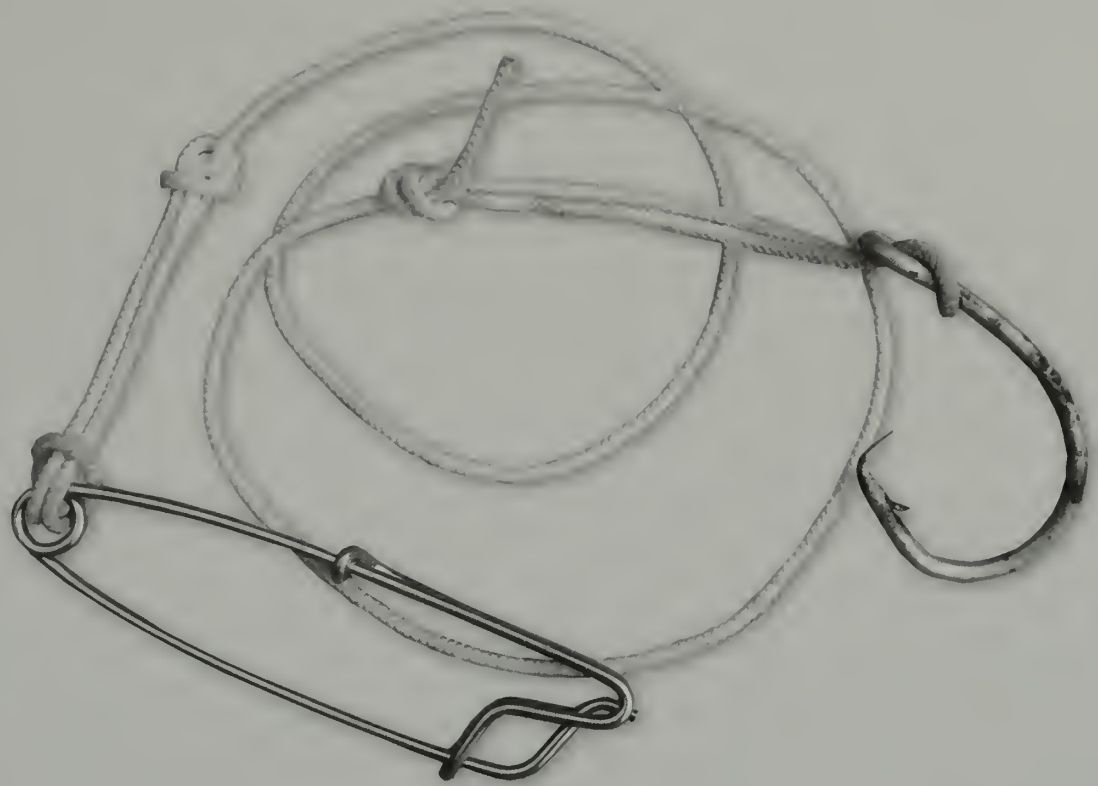


Figure 18: Modern halibut circle hook. Compare with figure 2. (courtesy Bill Eichenlaub)

compare with Figure 2), which, despite their appearance, are far more efficient at hooking and retaining halibut. The use of circle hooks offers a conservation benefit as well: since the hooks almost uniformly hook halibut by the lip, undersize fish can usually be returned to the water with no mortality.

The NPS kept some records of the commercial halibut effort in Glacier Bay during the 1960s.

- 1962: “Two or three commercial halibut boats operated in monument waters throughout the season;”<sup>214</sup>
- 1963: “two or three [halibut] boats fished Glacier Bay proper this season;”<sup>215</sup>
- 1965: “At least six boats regularly fished in Glacier Bay last summer. Catches were reported as fair to good throughout the season.”<sup>216</sup>

NPS ranger Greg Streveler recalled the vessels *Charbus* (from Juneau), *Sophia* (from Wrangell), and *Lenora Jane* (from Hoonah) to have fished halibut regularly in Glacier Bay during the late 1960s.<sup>217</sup> He recalled that the three vessels—especially the *Sophia*—were very well-kept.<sup>218</sup> Ranger Russ Cahill wrote of a “thriving” halibut fishery in Glacier Bay in 1970, but later said that most of the vessels fishing were old and in poor repair.<sup>219</sup>

### Dungeness Crab

During the 1950 season, one vessel, the *Wanita*, which was home-ported at Petersburg, prospected for Dungeness crab in Glacier Bay during August.<sup>220</sup>

In his 1951 patrols of Glacier Bay, Ranger Oscar Dick encountered two vessels that were fishing for Dungeness crab. One vessel fished all summer, the other started in mid-September. Dick estimated the catch for each vessel to be 75 dozen crab (about 2,100 pounds) per week.<sup>221</sup> When inspected by Dick, both vessels were using seal meat as crab bait. Dick did not arrest the men, but informed them that the use of seal meat for crab bait was illegal and issued them a “stern warning,” which apparently caused something of an uproar in Hoonah.<sup>222</sup>

In the spring of 1952, the Fish and Wildlife Service extended the Dungeness crab season in the Icy Strait District—which included Glacier Bay—to year-round.<sup>223</sup> There seems to have been little, if any, commercial fishing for Dungeness crab in Glacier Bay during the remainder of the 1950s.

### Sharks

Shark liver is rich in Vitamin A and contains other substances that are thought to have medicinal properties. During World War II, a market developed for the livers of sharks, skates and halibut. Halibut livers were saved in the

course of normal halibut fishing, and a small, though generally not very lucrative, fishery that targeted sharks for their livers developed in Southeast Alaska. The sharks fished were known to the fishermen as “mud sharks,” and attained a length of up to twenty feet. They were likely Pacific sleeper sharks (*Somniosus pacificus*), and were caught in deep water with longline gear or handlines. Reminiscent of Ernest Hemmingway’s *Old Man and the Sea*, handliners sometimes fished from skiffs. They used salmon for bait and towed caught sharks to the beach to remove the liver, which floats. The liver was the only part of the shark that was utilized. Livers were kept in square five-gallon metal cans that were provided by buyers, and generally fetched about \$0.25 per pound. The liver of one particularly large shark was said to have nearly filled a 55-gallon drum. In the early 1950s, one vessel, a longliner from Juneau, reportedly fished sharks in Glacier Bay “for something to do” after the halibut season.<sup>224</sup> The shark liver fishery in Southeast Alaska collapsed in the 1950s when the Norwegians began marketing cod liver oil.

### **A Few Gustavus Homesteaders Go Fishing**

The first homesteaders arrived at Gustavus (then known as Strawberry Point) in 1914. A total of 14 homesteads were patented before homesteading was closed in 1966. The very resourceful homesteaders at Gustavus did whatever they could to make a living, but they tended to look to the land rather than the sea. They farmed, raised cattle, logged, cut lumber, mined gold, worked for the government, worked seasonal construction jobs and in canneries. A few began to fish commercially in the 1930s and 1940s, but only one, Fred Matson (whose wife taught school) made something of a career of it. To a man, the Gustavus fishermen were trollers who focused their efforts on coho salmon in Icy Strait and Cross Sound. The author, who personally knew many of them and even fished with Bert Parker (admired as a “master coho-catcher”), never heard any mention of their fishing in Glacier Bay.

### **Harbor Seals**

Glacier Bay is home to thousands of harbor seals (*Phoca vitulina*), which concentrate on icebergs along glacier fronts during the springtime pupping season. Hoonah Natives

hunted seals for food and hides in Glacier Bay since before John Muir’s time.

Seals are predators on salmon, and were for many years unfairly blamed for poor salmon runs. To increase the number of salmon by reducing the number of seals, the Alaska’s Territorial Legislature in 1931 passed legislation that placed a \$2 bounty on seals.<sup>225</sup> As well as reducing the seal population, the bounty infused some much-needed cash in rural Alaska. The bounty had no discernible effect on salmon runs.

No hunting of any sort was permitted in Glacier Bay N.M. This was a hard pill to swallow for the Hoonah Natives. In 1937 some 155 residents of Hoonah and nearby areas petitioned Anthony Dimond, Alaska’s non-voting delegate to Congress, to have Glacier Bay N.M. opened to hunting seals.<sup>226</sup> In the fall of 1939 the NPS reached an agreement with the Bureau of Indian Affairs (BIA) to allow Hoonah Natives to hunt seals to help alleviate a wartime food shortage. The exception was formalized in a December 18, 1946 agreement between the NPS and BIA.<sup>227</sup>

Seals were valuable for the bounty, for their hides, as a traditional food in Hoonah, and also for crab bait. Both vessels reported to be fishing Dungeness crab in Glacier Bay in 1951 (as noted above) were using seals as bait.<sup>228</sup> Seal meat was even used by the FWS to bait shrimp pots during exploratory fishing in Glacier Bay in 1966.<sup>229</sup>

The seal hunting issue became more urgent in 1966, when a scheduled tour boat, the *Sea Crest*, began operating out of Bartlett Cove. The boat’s destination in those years was Muir Inlet. As well as staggering views of mountains and glacier and icebergs, tourists expected to see wildlife in its element. They usually saw at least some seals reposing on icebergs, but they sometimes also encountered skinned seal carcasses, sometimes hundreds of them, rotting on the beaches—not what one would expect to see in an area managed by the NPS. The seals had been shot for their bounty and hides. As well as being objectionable to tourists, NPS officials considered hunting a real threat to the seal population and wanted to end it. In contrast to seal hunting, the effect of commercial fishermen on fish populations in Glacier Bay was thought to be innocuous.<sup>230</sup>

Because of pressure brought by politicians and Hoonah Natives, the NPS was unable to end the hunting of seals in Glacier Bay until

1974. The issue was at times “red hot” in Hoonah, and this decreased the NPS’s ability to press its agenda on other issues, such as curtailing or ending commercial fishing.<sup>231</sup>

### Shrimp

Five species of shrimp of commercial value inhabit Glacier Bay: pink (*Pandalus borealis*), humpy (*Pandalus goniurus*), sidestripe (*Pandalopsis dispar*), coonstripe (*Pandalus hypsinotis*), and spot (*Pandalus platyceros*). These shrimp usually spawn in the fall, with the female—depending upon her size—carrying several hundred to 4,000 eggs until they hatch in the spring. Shrimp are opportunistic bottom feeders that eat a wide variety of live and dead organisms, including diatoms and algae. Pink and humpy shrimp are the smallest of the five Glacier Bay species, and are usually marketed as “cocktail” or “salad” shrimp.<sup>232</sup>

There seems to be no record of commercial shrimp fishing in Glacier Bay prior to the 1960s. The first effort to explore Glacier Bay for shrimp, however, took place in 1952. Part of the mission of the Department of the Interior’s Fish and Wildlife Service was to explore areas for their commercial fishery potential. To that end, the FWS vessel *John N. Cobb* spent part of 1951 prospecting Southeast Alaska for shrimp. The vessel returned to prospect for two additional months in 1952, a substantial portion of which was spent in Glacier Bay.

A small (20-foot) beam trawl, as well as several styles of shrimp pots, were used in the explorations. A beam trawl is a type of bottom trawl in which the mouth of the cone-shaped net is held spread apart horizontally by a long wooden beam. The vertical opening is maintained by a horseshoe-shaped steel frame on each side of the net. As the trawl is towed at a speed of 2.5 to 3 knots, a steel chain stretched below the beam “tickles” the ocean bottom to make shrimp “jump” vertically, to be caught in the trailing net. Beam trawls are more suitable for use over an uneven ocean bottom than the standard otter trawl, which utilizes a hydrodynamic design incorporating wing-like “doors” to keep the net spread. Drag times can range from about thirty minutes to two hours, depending on the bottom characteristics and catch. In Southeast Alaska, beam trawls are used to target pink, sidestripe, and coonstripe shrimp.

Shrimp pots are considerably smaller and lighter than Dungeness crab pots but function similarly. The usually rectangular pots have

a steel frame covered with synthetic mesh. Shrimp gain entry into the pot through a pair of funnel-like tunnels. Shrimp pots are usually baited with herring and fished in strings of perhaps ten pots. Current regulations require a biodegradable escape mechanism to be installed on each pot to prevent “ghost” fishing by lost or abandoned gear. Pot shrimpers in Southeast Alaska target spot shrimp (the North Pacific’s largest) and coonstripes.

Of the areas investigated during the 1952 trip, the most promising indications of shrimp in commercial quantities were found in Glacier Bay. The catch was so encouraging that the *John N. Cobb* twice prolonged its prospecting efforts in the bay. The best catches, though not outstanding by industry standards, were made in the vicinity of Sturgess and Seebree Islands, where drags with the beam trawl yielded catches of up to 330 pounds per hour of mixed pink and sidestripe shrimp.<sup>233</sup> Similar catches were made as well in Muir, Queen, Hugh Miller and Rendu inlets. Based on the catches, C. Howard Baltzo, FWS assistant regional director, speculated that an expansion of the shellfish industry might be in the offing, and that the establishment of a shrimp cannery at Glacier Bay appeared feasible.<sup>234</sup> This was followed by what the NPS termed “rosy speculation” by the fishing industry over the possibility of Glacier Bay becoming a great shrimping center.<sup>235</sup> The alarm on the part of the NPS was palpable. The only private property in Glacier Bay was the old Carl Swanson fox farm on Strawberry Island. To forestall the establishment of a commercial enterprise, Ben Miller, superintendent of Sitka N.M. and Glacier Bay N.M., suggested steps be taken to purchase the property.<sup>236</sup> It was not necessary to do so. There was no real interest in establishing a shrimp processing plant in Glacier Bay, and the Swanson fox farm was not really private land, but a site leased from the Forest Service before Glacier Bay N.M. was expanded. It eventually reverted back to the government.

For its part, the FWS agreed with the NPS policy of keeping commercial development out of Glacier Bay N.M.<sup>237</sup> Based on the previous year’s discovery by the *John N. Cobb* of commercial quantities of shrimp at Idaho Inlet (on the north shore of Chichagof Island), the Icy Straits Salmon Co. at Hoonah had begun canning shrimp.<sup>238</sup>

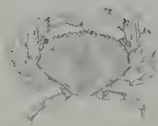
Despite the apparent presence of commercial quantities of shrimp, Glacier Bay received

little attention from shrimp fishermen. One NPS report of shrimp fishing in Glacier Bay was in March 1959, when one vessel operated in Bartlett Cove for four days.<sup>239</sup> Late in 1966 the FWS sent the research vessel *John R. Manning* to Ernest Sound and Icy Strait in Southeast Alaska to prospect for spot and coonstripe shrimp, and to test a number of shrimp pot designs. In Glacier Bay pots were set in Bartlett Cove, Geike Inlet, Hugh Miller Inlet, Tidal Inlet and North and South Sandy coves as well as in the bay itself. None of the areas yielded commercially significant catches.<sup>240</sup>

In 1972 the NPS reported that only two vessels in the past five years had fished in waters proposed for wilderness. Both vessels had fished briefly in Hugh Miller Inlet in 1971, and produced what the NPS termed “profitable catches” of coonstripe shrimp. The NPS was “virtually certain that catches comprised but a minor amount of each boat’s annual income.”<sup>241</sup>

In the late 1970s, two Gustavus residents, Lynne Jensen and Phil Wyman, did some commercial shrimp fishing from a skiff. Jensen recalled her crew share for the season as being \$100.<sup>242</sup> Also, the author recalls seeing a vessel that appeared to be trawling for shrimp near Seebree Island around 1979.

Shrimp are a prey species for the endangered humpback whale. In 1980, under authority of the NPS Organic Act and citing the Endangered Species Act of 1973, the NPS closed Glacier Bay to commercial shrimp fishing.



## Chapter 4: Custodial Management

### NPS Establishes a Presence at Glacier Bay

When Frank Been and Earl Trager made their inspection tour of Glacier Bay in 1939, they were possibly the first Park Service officials to have visited the area, and certainly the first to have spent a significant amount of time in the monument. Transportation and communications in Alaska were improved greatly during and immediately after World War II, but until then the territory's remoteness and poor communications prevented NPS policymakers in Washington, DC from having a significant impact on the regular management of Alaska's parks and monuments. Administration was also constrained by miniscule administrative budgets. The fact that Glacier Bay was a national monument, as opposed to a national park, further compounded the situation: while national parks were typically administered for the enjoyment of the public and to be developed accordingly, national monuments were areas of primarily scientific significance that were to be protected from encroachment, a practice that is said to have endured longer in Alaska than elsewhere. NPS historian G. Frank Williss described the management situation at Glacier Bay and other national monuments in Alaska until 1950 as "near total neglect."<sup>243</sup>

In the summer of 1950, Ranger Duane Jacobs was detailed to travel to Glacier Bay from Sitka. His assignment was to establish an NPS "beachhead" at Bartlett Cove.<sup>244</sup> Jacobs hired Gustavus homesteaders Bert and Glenn Parker to move a 16-foot by 20-foot frame cabin that the Army had abandoned on Pleasant Island to Lagoon Island in Bartlett Cove. Some of the lumber used in repairs and improvements to the cabin and for a temporary mooring float in the lagoon was salvaged from the "old fishery"—perhaps the remnants of the building constructed in 1900 by August Buschmann.<sup>245</sup> During the following summer (1951), Oscar Dick, who became Glacier Bay N.M.'s first permanent ranger, made three patrols of Glacier Bay.<sup>246</sup> Dick was stationed at Sitka.

In 1953, Ranger Bruce Black and his wife, three children and an NPS seasonal employee spent the summer in Glacier Bay aboard the *Nunatak*, a gasoline-powered, twin-screw vessel the NPS had acquired surplus from the

Coast Guard. Black's job was to "show the flag," which he did in his considerable explorations of Glacier Bay. During his first year in Glacier Bay, Black saw a single commercial fishing vessel, which was fishing for halibut. Possibly with Oscar Dick, Black boarded the vessel and later got to know the skipper somewhat. He also found one Dungeness crab pot on the beach at Berg Bay and another at a location that he could not recall. Black kept them for his personal use.<sup>247</sup>

The following summer, Black with his wife and children and two deckhands (Justin Ripley and Ken Youmans) returned to Glacier Bay. They arrived before the halibut season began, and the same vessel that had been fishing Glacier Bay in 1953 was anchored in Bartlett Cove. Under the cover of a dense fog the vessel began fishing for halibut before the season had officially opened. Black also saw a troller from Hoonah at Hugh Miller Inlet, but those aboard were there not to fish, but to gather soapberries.<sup>248</sup>

The summer of 1955 was Black's last at Glacier Bay. It was spent aboard the bigger but slower *Nunatak II*, which the NPS had acquired (with its skipper, Leon Vincent) from the Bureau of Mines. Although Black patrolled extensively that year (mostly in a skiff), he recalled no commercial fishing activity.<sup>249</sup>

In 1957, Ken Youmans (later the monument's chief of maintenance) became the first NPS employee to be permanently stationed at Bartlett Cove.<sup>250</sup> Youmans recalled very little commercial fishing activity in his early years at Glacier Bay.

### Statehood for Alaska Complicates the Jurisdiction Issue.

Under the management of the federal government, Alaska's salmon fisheries continued to suffer. Lacking jurisdiction of its fisheries, the Territory of Alaska could do little. It established a Department of Fisheries, in 1949. The department did some fisheries research, but its official role was limited to providing advice to federal fisheries managers.

The catch of salmon in Southeast Alaska was so poor in 1953 and 1954 that President Eisenhower declared the region to be a disaster



area.<sup>251</sup> In response to the downward trend of Alaska's salmon fisheries, Eisenhower's Secretary of the Interior, Douglas McKay, in 1954 initiated the first serious program to rehabilitate Alaska's salmon runs. Referred to as the "Alaska salmon restoration program," the effort by the Fish and Wildlife Service involved area closures and trap fishing restrictions as well as better enforcement of regulations.<sup>252</sup>

A big part of the debate that led to statehood for Alaska involved the commercial fishing industry, specifically salmon traps, such as the one located at Point Gustavus. The traps were overwhelmingly unpopular among Alaskans. They were largely owned by canneries, which were largely owned by Outside interests. Salmon traps operated efficiently with a minimum of labor and left many Alaska fishermen without employment. This alone fostered a high degree of resentment of the traps and their owners.

But fishermen also blamed the traps for the decline in Alaska's salmon runs.<sup>JJ</sup> Trap operators countered by blaming illegal fishing by fishermen using "mobile" gear, particularly seiners, for the decline. Echoing the trap operators' argument, federal fisheries managers favored the traps: they were stationary and thus fairly easy to regulate, in contrast to mobile gear that could be used to surreptitiously fish in closed waters.

Alaskans wanted the traps eliminated. Bills were introduced in each session of Congress from 1932 until at least 1955 that would have eliminated salmon traps, but each failed for lack of endorsement by the Department of the Interior. For Alaskans, statehood was a vehicle to do what the federal government had for so long refused to do: statehood would give Alaska control of its fisheries and the authority to ban salmon traps.

All of this changed in 1955, when Secretary McKay—apparently for conservation reasons—called for the elimination of fish traps in Alaska over a five-year period.<sup>253</sup> By that time, however, Alaska statehood appeared to be close on the horizon.

Alaska was granted statehood on January 3, 1959. Under the terms of the Alaska Statehood Act, the administration and management of Alaska's fish and wildlife resources were not to be transferred to the state until adequate

provision was made for their administration. To the great joy of most Southeast Alaskans, in March 1959 the DOI announced the prohibition of the use of salmon traps in Alaska except those that had been operated by Native villages.<sup>254</sup> The administration and management of Alaska's fish and wildlife resources were transferred to the State of Alaska the following year. Among the Alaska legislature's first actions was to prohibit the use of salmon traps in waters that now belonged to the state. Governor William Egan called the revival of Alaska's commercial fisheries an "absolute imperative."<sup>255</sup>

With Alaska's statehood, the federal government's exclusive jurisdiction over Alaska's national parks and monuments ended. Though both the federal and state governments were for a time uncertain about jurisdiction in Glacier Bay, it was later determined that the NPS held "proprietary" jurisdiction: except where public safety and health, or the purposes of the federal reservation, were involved. The proprietary jurisdiction granted the service the same rights and privileges given any landowner. In general, the NPS could promulgate regulations that were more restrictive, but not more expansive than those of the State of Alaska. It could, for instance, restrict fishing an area open under state regulations, but could not extend a fishing season beyond what was authorized by the state.

Unique among the states, Alaska's constitution contains a provision devoted solely to the management and utilization of natural resources: "Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses."<sup>256</sup> From the State's viewpoint, this was a clear mandate that commercial fisheries resources under its control would be developed. With fish traps essentially out of the picture, the state quickly embarked on an aggressive and comprehensive effort to rebuild and enhance Alaska's salmon runs.<sup>KK</sup> The "improvement" of streams in Glacier Bay N.M. was intended to be part of that effort.

Not long after the state took over control of the fisheries from the federal government, Chief Ranger Francis Jacot contacted officials

<sup>JJ</sup> A trap located at Point Couverden (on Icy Strait, about 35 miles east of Glacier Bay) operated by August Buschmann was reported to have caught a million salmon in one season.

<sup>KK</sup> A Supreme Court decision and special regulations permit Native interests at Metlakatla, on Annette Island, in southern Southeast Alaska, to operate salmon traps in the waters surrounding the island.

of the Alaska Department of Fish and Game (ADF&G) to offer cooperation in enforcing fishing regulations on the monument's streams. Apparently unbeknownst to Jacot, the department had initiated a stream survey in the monument. The survey was part of a stream improvement program intended to increase the production of salmon, a program that Superintendent Mitchell considered "not compatible with preservation of the wilderness character of the Monument." The unwanted program was "headed off" by the NPS. The ADF&G's response to Jacot's offer was that if it could not manage the watersheds to suit its own purposes, it would not cooperate in enforcing regulations in the monument.<sup>257</sup> It was a classic turf war between two bureaucracies that endured for a number of years. There was some cooperation, however: Chuck Janda recalled ADF&G asking his assistance in tracking Duke Rothwell, a Dungeness crab fisherman who was thought to be fishing more than the legal number of pots, and, to cite another example, ADF&G notified the NPS before an agent traveled to Glacier Bay to place salmon regulatory signs at Young Island and Rush Point.<sup>258</sup>

The effort to rehabilitate Alaska's salmon runs was hugely successful. Though initiated by the federal government, most of the work was done by the State of Alaska, which received virtually all of the credit for its success. The state deserves and continues to receive credit for more than four decades of success in maintaining Alaska's salmon runs as well as the other fisheries under its jurisdiction. (There are some exceptions. See page 83, Tanner and King crab discussion). One result of the state's success at rejuvenating and maintaining salmon runs was that it gave the state a wealth of credibility in the realm of fisheries management. This was, in turn, used by the state to leverage its position in the debate over whether the state or federal government should manage Glacier Bay's fisheries.

### **The Wilderness Act**

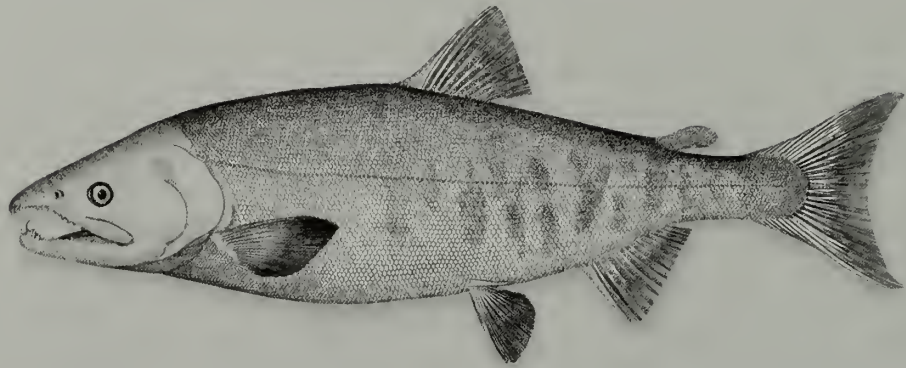
In 1956, Howard Zahniser, executive director of The Wilderness Society, drafted legislation designed to protect some of the remaining wilderness in the United States. The legislation that became the Wilderness Act was introduced in Congress that same year, and it was rewritten dozens of times before becoming law in 1964.<sup>259</sup> The Wilderness Act

clearly authorized preserved areas with little or no development. The legislation basically defined wilderness as an "area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain." Wilderness areas were to 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." As well as designating some 9.1 million acres of national forest lands as wilderness, the legislation required the Secretary of the Interior to review every roadless area of 5,000 contiguous acres or more in the national park system to determine its suitability for preservation as wilderness. There was never any doubt that commercial fishing would be precluded in areas designated as wilderness.

As was the case with the U.S. Forest Service, many in the NPS did not welcome the Wilderness Act. The agencies felt that the legislation tied their hands and prevented them from administering the lands in their charge as they saw fit. Like it or not, however, the NPS was required to review Glacier Bay N.M. for areas suitable for designation as wilderness. It would do so with the well-being of commercial fishermen in mind.

# Fish Report No. 2:

Duke Rothwell—King Crab—Thompson Fish Co.—Bull Moose





### Duke Rothwell

In 1962, Norman “Duke” Rothwell traveled the Inside Passage to Alaska from his home in Blaine, Washington on the *Pride*, a small vessel rigged to fish Dungeness crab. Dungeness crab were then on a down cycle in Washington, Oregon, and California, but populations in Alaska were healthy and there was a ready market in the Lower 48 for all that could be produced.<sup>260</sup> Participation in Southeast Alaska’s Dungeness crab fishery was so low at that time that there was minimal need for formal regulations and other restrictions. The season was year round and there was no limit on the number of pots an individual could legally fish.<sup>LL 261</sup>

Whether by design or simply because Glacier Bay was near the end of his exploration of the crab fishing grounds along the Inside Passage, Rothwell fished the lower waters of Glacier Bay for about two months that fall. The following season he returned and fished for about three months in Dundas Bay.<sup>262</sup> Pelican Cold Storage was operating a crab cannery at Hoonah, which provided a convenient market.

In 1964, Rothwell upgraded to the 40-foot *Adeline*, a Washington-built troller that he converted to fish Dungeness crab (see Figure 19). He leased the *Pride* to another fisherman, who worked together with him in Southeast Alaska at least until 1969.<sup>MM 263</sup> The *Adeline* would become a fixture in the Glacier Bay area for nearly four decades, and Rothwell would become probably the region’s most successful Dungeness crab fisherman. Each year, usually from mid-spring through mid-fall, he fished from Point Couverden to Dundas Bay, and he routinely caught some 200,000 to 350,000 pounds of crab.<sup>264</sup> His best year was said to have been a million pounds, but this may have included crab caught by the *Pride*, in which he retained an interest, and possibly another vessel, the *Julia*, which fished the outer coast waters around Icy Point.<sup>NN 265</sup> Rothwell often boasted during the 1970s that he “owned” Icy Strait.

Chuck Janda, who was a ranger at Glacier Bay from April 1964 until January 1978, remembered Rothwell as a “likeable char-



Figure 19: Duke Rothwell aboard the *Adeline* at Pelican Cold Storage with full load of crab. Rothwell was among the most skilled and successful fishermen who fished in Glacier Bay. (courtesy Stewart Ely)

acter, always a smile and a wave when we passed.”<sup>266</sup> Greg Streveler, NPS biologist at Glacier Bay, recorded only one vessel fishing Dungeness crab in Glacier Bay in the years 1969 and 1970. The “sustained effort” through those summers was Rothwell’s.<sup>267</sup> Rothwell also supplied Glacier Bay Lodge with Dungeness crab.<sup>268</sup>

A chain-smoker who alternated between Camels and Salems, Rothwell was extremely savvy and efficient. He was also very secretive: his marker buoys were painted a drab color and he used sinking buoy line. This made his gear difficult to see from the water and almost impossible to see from the air. Another of his tricks was to shorten buoy lines so the buoys were underwater except at low tide. The *Adeline* itself was painted “creekrigger” grey, a color favored by salmon fishermen who tried to remain undetected while fishing in closed areas. Rothwell was even known to travel at night without running lights to keep others from knowing where he fished. Many thought Rothwell’s success at catching crab was due to his fishing more pots than the

<sup>LL</sup> In 1963 the pot limit was established at 300. The first seasonal closures were introduced in the late 1960s.

<sup>MM</sup> In 1964 Chief Ranger David Butts complained of Dungeness crab buoys in Bartlett Cove being so numerous that they were a hazard to boat and float plane traffic. Two vessels, one of which was the *Adeline*, had set more than fifty pots between the NPS dock and the head of Bartlett Cove. Butts proposed that the NPS adapt a special regulation that would prohibit all commercial fishing inside of a line drawn from the NPS dock true northwest to Lester Island.

<sup>NN</sup> A catch of a million pounds of crab over a period of, say, 39 weeks using 300 pots requires the average catch per pot per week to be about 85.5 pounds, or about 33 crab, based on an average crab weight of 2.6 pounds.

300 that regulations allowed. Even some of his deckhands thought this was the case, but no one seemed to know for sure.<sup>269</sup> ADF&G enforcement agent Clint Converse spent considerable time trying to prove Rothwell was running too much gear, but it seems he was never able to do so. Rothwell considered keeping ahead of Converse's efforts to be all good sport.<sup>270</sup>

For a number of years, Rothwell had a gentleman's agreement with Pelican Cold Storage to supply all the Dungeness crab needed by the Hoonah cannery. In exchange, the cannery agreed to not purchase crab from other vessels. According to Rothwell, there were only so many Dungeness crab in the area, and if another vessel was involved, fishing wouldn't be worth his time and he would leave.<sup>271</sup> Twice a week the *Adeline* delivered 3,000 to 4,000 pounds of crab to the Hoonah cannery.

About the same time Rothwell began fishing, the crab cannery at Hoonah began brine freezing whole "jumbo" crab, and about five years later it began producing gallon cans of frozen crab meat for the restaurant trade.<sup>272</sup> In 1974-1975, the plant was shut down and operations moved to Pelican.<sup>273</sup>

"Nobody saved me no buffalo" was Rothwell's favorite response to questions about catching so many crab. Rothwell's actual stewardship of the Dungeness crab resource was based on his own financial interests. Since he had little competition, he could afford to let the grounds he had been fishing "rest" for several years so the size and the quality of crab would increase. Rothwell sometimes said he was "farming" Dungeness crab.<sup>274</sup> His general routine was arguably beneficial for the health of the resource as well as for Duke Rothwell. Some aspects of Rothwell's crab fishing venture, however, were of questionable value. After he noticed that the largest female Dungeness crab in the area were at Idaho Inlet, he transplanted some in Dundas Bay, hoping there was a genetic factor at play that would increase the average size of male crab there.<sup>275</sup> He also transplanted crab from Dundas Bay to near Young Island, in Glacier Bay's Beardslee Islands.<sup>276</sup> Rothwell's crab fishing venture was clearly not healthy for the immature king crab that on one occasion filled a number of his Dungeness pots in the Beardslees. The king crab were competing with the Dungeness, and Rothwell told Pete Lesh, one of his deckhands, to "break those crab." Lesh refused, saying

someday somebody would be catching the crab. "Nobody saved me no buffalo" was Rothwell's reply. He then had his other deckhand kill the crab.<sup>277</sup>

In about 1970, Superintendent Bob Howe seemed to think Dungeness crab fishing in the Beardslee Islands had little future. He took the Sierra Club's Jack Hession on a tour of the islands, where he explained that the crab gear they were seeing belonged to an "old fellow" (Rothwell), whose retirement would end crab fishing in the Beardslees.<sup>278</sup> Rothwell retired in 1984, but crab fishing did anything but end. He sold the *Adeline* and his crab gear to Otto and Christina Florschutz, who, in combination with a number of other fishermen, fished the Beardslees far more intensively than Rothwell ever had.

### King Crab

The king crab industry began developing in Alaska shortly after World War II, with the effort concentrated in the Bering Sea. In 1964, fishermen statewide delivered nearly 90 million pounds.<sup>279</sup>

King crab are not true crab, but "anomurans." They differ outwardly from true crab in that they appear to have four pairs of legs (including the front claw-carrying ones), rather than five, as in true crab. The fifth pair of legs is very small and often tucked away beneath the carapace. The vast majority of king crab caught in Glacier Bay are red king crab (*Paralithodes camtschatica*). Also of interest in Glacier Bay, however, is the blue king crab (*Paralithodes platypus*). Although the species's range extends from Southeast Alaska to Japan, Glacier Bay proper is one of only three small areas in Southeast Alaska where it has been targeted by fishermen.<sup>280</sup> A large blue king crab can weigh about twenty pounds and be nearly four feet across. Golden king crab (*Lithodes aequispina*) are also caught in Glacier Bay.

King crab are caught in large rectangular nylon web-covered steel-framed pots that can weigh 600 pounds or more. As with Dungeness pots, one-way tunnels allow the crabs entry but not egress. King crab pots are usually baited with herring. In Southeast Alaska, seine boats, which are generally 58 feet long (the legal limit), are often used to fish king crab.

In what may have been the first effort to catch king crab in Glacier Bay, the vessel *Rio de Oro* fished for approximately nine months in 1962.<sup>281</sup> The following year, however, there was

no effort.<sup>282</sup> In 1965 only one vessel fished king crab in Glacier Bay “with any frequency.”<sup>283</sup> Greg Streveler, who became a ranger at Glacier Bay N.M. in 1967, recalled that the vessels *Baranof Queen* and *Wyoming* fished king crab in Glacier Bay during the late 1960s. The *Wyoming* continued to fish beyond the 1960s, and the vessel’s captain, Ivar Isaacson, reported a noticeable population decline around 1970.<sup>284</sup> Streveler reported that two vessels fished king and Tanner crab in lower Glacier Bay during the winters of 1969-1970 and 1970-1971.<sup>285</sup> The effort, at least during the first winter, was not intense: Superintendent Bob Howe reported very little king crab fishing in Glacier Bay in 1970.<sup>286</sup> In about 1976 the vessel *Eagle*, a cannery tender during the salmon season, fished king crab in Glacier Bay. On at least one occasion, maintenance personnel at Glacier Bay helped make repairs on the *Eagle* and were given a few king crab in return for their effort.<sup>287</sup> Ranger Russ Cahill recalled that the wives of NPS staff sometimes traded fresh-baked bread for king crab. Another source of king crab for the staff was right at Bartlett Cove, where the NPS vessel *Nunatak* was sometimes used to set and retrieve a “personal use” king crab pot. The crab were cooked using the NPS maintenance shop’s steam cleaner.

While most commercial fisheries in Glacier Bay proper grew over time, it seems the king crab fishery actually got smaller. There simply were not enough king crab in Glacier Bay to support a sustained effort.

#### **Thompson Fish Co.**

The Thompson Fish Co., which evolved into the present-day Hoonah Cold Storage, a major processor of halibut and Tanner crab from Glacier Bay, was established in Hoonah by Mike Thompson. Thompson was not originally a fish processor, but a fish buyer who bought fish under contract with various processing plants. He operated troll salmon buying scows at Deer Harbor and Hoktaheen, on the outer coast of Yakobi Island, which he serviced with his tender, *Tualitin*. He also had a buying scow that he tied to the dock at Hoonah. In about 1962, Thompson opened the Thompson Fish Co. in a small warehouse that had been previously used by the mail boat that served Hoonah. The warehouse was built over the water, and located on the site of the present-day Hoonah Cold Storage. Thompson’s operation was initially a “shoe-string” fresh fish opera-

tion. Fresh troll-caught salmon as well as some incidentally-caught halibut were shipped by air to markets in the Lower 48.<sup>288</sup> The fish were transported from Hoonah to Juneau in amphibious planes, where they were transferred to scheduled planes that took them to Seattle. By 1970 the Thompson Fish Co. had the capability to freeze limited quantities of fish.<sup>289</sup> Ice was initially not provided to fishermen, but was used only to cool purchased fish.<sup>290</sup> During the 1970s, Mike Thompson moved his operation to a larger building and increased its freezing capacity to about 35,000 pounds per day. By the mid-1970s, Thompson was able to provide ice to fishermen.

#### **Bull Moose**

On July 20, 1969 the approximately 52-foot Seattle-based wooden-hulled salmon seiner *Bull Moose* (built in 1913) was enroute from Hoonah to Glacier Bay Lodge for an evening of recreation for the crew during a closed period in the salmon season. With its seine and heavy seine skiff on deck and nothing in its hold, the *Bull Moose* was top-heavy. Near Ancon Rock, at the southeast entrance to Glacier Bay, the vessel suddenly capsized and sank, perhaps because the seine skiff had shifted to one side. The Ancon Rock area is known for its tide rips. Two crewmembers were trapped below deck and perished. The captain and three crewmembers survived by clinging to the seine’s corkline for about half an hour before being rescued by Glacier Bay Lodge concessioner Frank Kearns, who happened to spot them while out for an afternoon of fishing. The bodies of the dead crewmembers were recovered after the vessel was brought to the surface by the U.S. Coast Guard cutter *Sweetbriar*. The *Bull Moose* was then towed to a nearby beach for salvage operations, after which it was abandoned.<sup>291</sup>





### The 1960s: Commercial Fishing Mostly a “Non-Issue”

In 1963 Ranger Dave Butts was promoted to the chief ranger position at Glacier Bay. Butts was interested in the monument’s marine as well as terrestrial resources, and opined in 1964 that “Where Glacier Bay proper is concerned, the recently de-glaciated underwater portion is just as unique ecologically as that portion above water and deserves equal protection.”<sup>292</sup> Butts thought it was important for the NPS to understand Glacier Bay’s fishery resources as well as to protect them. While recognizing its legality, Butts personally opposed commercial fishing in Glacier Bay N.M. and thought it was not something visitors should be subjected to seeing in an area managed by the NPS.<sup>293</sup>

Under Butts a program to survey the salmon spawning streams in Glacier Bay N.M. was initiated in 1963. Butts characterized the program, which was largely carried out by seasonal rangers, as “hit-and-miss” and “crude by professional standards,” but the best that could be managed given the resources available. Data gathered included water temperature, stream flow, identification of salmon present, and sketches of the streams. The survey continued at least through 1965 and provided a good general idea of salmon spawning activity in the monument.<sup>294</sup>

In approximately 1962 Butts drafted special regulations to close both Bartlett Cove and Sandy Cove to commercial fishing. The coves were the principal sites under consideration for possible future visitor facilities, and Butts may have wanted to spare visitors the sight of commercial fishermen at work or to ensure that adequate sport fishing opportunities were preserved. He may have also been taking an opportunity to justify the elimination of some of what he considered an inappropriate activity in the monument.

His draft regulations were not acted upon, but Butts made a similar request for Bartlett Cove in 1964 and justified it. He complained that Dungeness crab buoys in the cove were so numerous that they were a hazard to boat and float plane traffic and made it difficult for recreational fishermen to catch legal crab. Two vessels, one of which was the *Adeline*, had set more than fifty pots between the NPS dock and the head of Bartlett Cove.<sup>00</sup> Butts pro-

posed that the NPS adopt a special regulation that would prohibit all commercial fishing—not just Dungeness crab fishing—inside of a line drawn from the NPS dock true northwest to Lester Island.<sup>295</sup> As with his previous effort, the proposal was not acted upon. Though others in the NPS had previously expressed the sentiment that commercial fishing was an inappropriate activity in Glacier Bay, Butts’s unsuccessful proposals to constrain the activity were the first official attempts to do so. More than a quarter century would pass before the issue would once again be seriously addressed.

Perhaps the reason Butts’s proposed closures were not acted upon was because the NPS hierarchy was not entirely sympathetic with his view of commercial fishing, or it was perhaps more realistic about the potential political costs of curtailing the activity in Glacier Bay. Another factor was that the NPS thought it lacked jurisdiction over Glacier Bay’s waters. Butts that year had received a memorandum from Washington, DC stating that “The National Park Service does not have jurisdiction over the open waters of Glacier Bay itself.” Butts considered this lack of jurisdiction a “completely unmanageable situation” that afforded the NPS no control over commercial fishing. The situation, according to Butts, needed a thorough review, and, if necessary, legislation should be drafted to rectify it.<sup>296</sup>

The lack of clear jurisdiction was not the only problem. Glacier Bay National Monument’s annual fisheries report for 1965 noted that “law enforcement in Glacier Bay is virtually nonexistent.” Jurisdiction was an issue, but so was the lack of trained personnel and suitable equipment, which the report noted “severely hinder[ed] all attempts to initiate even a token law enforcement program.”<sup>297</sup>

The assessment was absolutely correct. In 1964 there were a total of two permanent and three seasonal rangers at Glacier Bay. And although the *Numatak* was sometimes used for patrols, Butts that year had only two dedicated patrol boats at his disposal, and both were of marginal utility. One was a 16-foot wooden-hulled “Skippercraft” powered by a single 35-horsepower outboard motor. The other was the *Berg*, a fiberglass-hulled runabout that was 17-1/2 feet long and powered by twin 35-horsepower outboards. Butts in 1964 thought that increasing the Skippercraft’s

<sup>00</sup> In 1992 the NPS counted 132 commercial crab pots in Bartlett Cove.

engine size from 35 to 40 horsepower “would help compensate the protection effort for its long near-crippled condition.” He also cited the “urgent need” of a fast and seaworthy patrol boat in the 25 to 32-foot range.<sup>298</sup> In 1967 the *Berg* was replaced by the 25-foot *Serac*, a first-class fiberglass-hulled vessel powered by twin gasoline-fueled 120-horsepower inboard/outboard engines. The original *Serac* was eventually retired and replaced by a newer vessel bearing the same name, which is still part of the park’s fleet.

A Glacier Bay N.M. planning document that appears to have been dated December 1965 stated that “Needed commercial and sport fishing will be regulated under the present program and in cooperation with other agencies to the extent it serves the best interest of the National Park Service.” The document offered no specifics, but it also mentioned the need to “improve salmon habitat management.”<sup>299</sup>

Chuck Janda became Glacier Bay’s chief ranger in 1967, and occupied that position until January 1978. Janda said that when he arrived to take a ranger’s position at Glacier Bay in 1964, commercial fishing was a “non-issue,” and that during his entire career at Glacier Bay the NPS “exercised no regulatory or enforcement authority over commercial fishing.”<sup>300</sup>

Although it was not an enforcement action *per se*, on Janda’s instructions in March 5, 1965, forty-six Dungeness crab pots were pulled by NPS employee Ken Youmans at Fingers Bay and transported to Bartlett Cove. Two days later Youmans did the same with about twenty pots at Berg Bay. The pots at Fingers and Berg Bays had not been tended since October or November, and contained many dead and dying crab. Janda approved the removal of the pots based on “an inherent dislike of seeing a resource misused.”<sup>301</sup> It is not known how the issue was resolved.

Bob Howe, who became superintendent of Glacier Bay in 1966 (see below) elaborated in 1971 on the jurisdiction issue: “The National Park Service has not contested the supposed right of the State and the International Pacific

Halibut Commission to manage marine fisheries within the monument. As a result, commercial fishing occurs as if the monument did not exist.”

“Commercial fishing,” according to Howe, “is allowed in the monument because the Secretary of the Interior has never promulgated regulations to prevent such activity.” Howe thought it was “possible that regulations governing commercial fishing in addition to those imposed by the State may be necessary.”<sup>302</sup>

In 1968 Howe hired Bruce Paige to be Glacier Bay’s chief naturalist. In this capacity Paige supervised and presented interpretive programs—“nature talks”—for the public. Visitors were curious about the commercial fishing boats they viewed when traveling up bay on the concessioner’s day boat and often asked about them. Naturalists were instructed to respond that commercial fishing was allowed and to describe the various fisheries, but were to make no value judgments.<sup>303</sup>

With statehood, Alaska adopted the FWS provision that limited salmon fishing in Glacier Bay—except for trolling—to areas south of a line running approximately from the south end of Young Island in the Beardslees to Rush Point, on the west side of Glacier Bay.<sup>PP 304</sup> South of this line fishermen could employ seines, gillnets or trolling gear, provided the fisheries were open under Alaska Department of Fish and Game (ADF&G) regulations.<sup>QQ</sup> ADF&G never opened any areas of Glacier Bay to gillnetting, but as part of the Icy Strait District, southern Glacier Bay was often open to seining for salmon. Few, if any, seiners bothered to fish there. They were far more interested in the often lucrative salmon fisheries in Cross Sound and Icy Strait and the passes that separated them.

In 1965 Adam Greenwald, a fisherman and salmon tender operator from Hoonah, was a member of the Alaska Board of Fish and Game, the governor-appointed group that establishes the state’s fish and game regulations. Greenwald thought Glacier Bay in its entirety—and particularly Beartrack Cove,

<sup>PP</sup> The specific line was 58° 27' 54" N. latitude.

<sup>QQ</sup> Gillnets are long, fairly shallow nets with a mesh size that allows fish to push their heads but not their bodies through. A fish that has pushed into a gillnet is prevented from backing out by its gill covers, which flare out when open. Gillnet mesh size varies depending upon the species being targeted. As with a seine, a “corkline” fitted with floats keeps the gillnet suspended. A weighted “headline” keeps it spread vertically. Modern commercial salmon gillnets in Alaska are usually several hundred feet long and vary in depth depending on the area fished. When fished, they are stretched near the surface at right angles to hang like a curtain in the migratory paths of salmon.

which had a decent run of pink, chum and coho salmon—should be open to salmon fishing. He simply wanted to give salmon seiners, particularly those from Hoonah, an additional opportunity to fish. The Board agreed with Greenwald, and in 1966 all of Glacier Bay was opened to salmon seining. The effort was for naught, because it appears that no one bothered to take advantage of the opening. Fishermen knew they could catch fish on their nearby traditional grounds, but were unsure what they might find in Glacier Bay. All opted for the known grounds. Greenwald's Glacier Bay regulation remained in effect for the 1967 season, but the previous regulation that limited salmon seining in Glacier Bay was reinstated the following year.<sup>305</sup>

The Bartlett River produced tens of thousands of sockeye salmon annually before its run was decimated by overfishing in the early 1900s. After more than eight decades with no real commercial fishing effort, the run of sockeye salmon in the Bartlett River has not “recovered.” The spawning population is currently several thousand in a good year. There was some speculation that the reason for the much reduced run was because the Bartlett River was once connected to nearby Bartlett Lake, where most of the salmon were thought to spawn. That connection was thought to have failed for some reason, resulting in a collapse of the run. Topographic evidence shows this not to have been the case, that sockeye salmon were never able to reach Bartlett Lake.<sup>306</sup>

The dramatically smaller run today in the Bartlett River likely has little to do with fishing either. Despite the excesses of the early 1900s, given the conservative management of Alaska's salmon stocks since statehood, if good habitat was available the Bartlett River's sockeye run should have rebuilt itself in relatively short order. Though there is no empirical evidence to prove it, the reason there are fewer sockeye salmon in the Bartlett River seems to be that the stream, like the landscape around it, has evolved. For a period of time in its post-glacial evolution, the Bartlett River was prime sockeye salmon habitat, with extensive areas of the clean gravel necessary for spawning. Much of that gravel has been and continues to be gradually covered with sediments, rendering it unsuitable for spawning sockeye salmon.

### **Bob Howe, Superintendent and Part-time Commercial Fishermen**

In 1966, Bob Howe replaced Leone Mitchell as superintendent of Glacier Bay N.M. Howe had been a Navy officer in the South Pacific in World War II, and he transferred to Glacier Bay from Yellowstone N.P., where he had been park biologist. To be superintendent of a major wilderness park area in Alaska was Howe's dream, and his enthusiasm for Glacier Bay and Alaska in general was contagious. In those days the superintendent spent the summer months at Bartlett Cove and the remainder of the year in Juneau. Howe relished his time at Glacier Bay, where his goal was to spend 10 days of each month in the backcountry. (He attributed his general ability to do this to having a very good secretary.) Glacier Bay Lodge opened the same year Howe arrived, and overseeing the new facility consumed the bulk of his time.

Commercial fishing wasn't a non-issue for Bob Howe. To him, commercial fishing in Alaska was attractive as a robust yet idyllic occupation in which one could be on the water in spectacular country, catch fish, and be paid for it.<sup>RR</sup> He sympathized with commercial fishermen, considered their activity in Glacier Bay appropriate, and eventually became a commercial fisherman, though of a very low-key, part-time variety.

Like Chuck Janda, whom he promoted to chief ranger, Howe owned a small runabout-type boat (see Figure 20). Both he and Janda licensed their boats as commercial fishing vessels and trolled for king salmon with sport poles as time permitted. While enjoyable, their operations generated little financial remuneration. The few fish they caught were sold to a cash buyer that anchored at Pinta Cove, in Icy Strait near Point Adolphus. Howe didn't believe the regional office knew of his commercial fishing activities, and he was certainly the last and probably the only Glacier Bay superintendent who fished commercially. By the 1990s NPS policy considered fishing commercially in Glacier Bay N.P. by employees to be a conflict of interest, and as such was not allowed.

Howe and Janda were mentored in their trolling endeavors by George Dalton, a former seine boat captain from Hoonah who in semi-retirement trolled with his wife Jessie for salm-

<sup>RR</sup> Howe's two sons became and remain career commercial fishermen based near Glacier Bay.



Figure 20: Former Glacier Bay Superintendent Bob Howe (right), in retirement fishing with friend Joe Stehlik (courtesy James Mackovjak)

on from a small, outboard-powered runabout boat. Dalton showed Howe the proper way to rig a herring to catch king salmon: make sure the herring “has a smile on its face,” he advised. Dalton greatly enjoyed being in Glacier Bay, the ancestral homeland of his Kagwaantaan clan, and was given approval by Howe to maintain a small cabin on Garforth Island, where he often stayed during his fishing and seal hunting forays.<sup>55</sup> He was an excellent fisherman who for a number of years was Glacier Bay Lodge’s principal source of salmon. Commercial fisherman Floyd Peterson, also of Hoonah, recalled Dalton catching big king salmon in Glacier Bay in the middle of summer when there weren’t supposed to be any to be had.<sup>307</sup>

#### 1971 Glacier Bay Master Plan

NPS master plans are predecessors of the agency’s general management plans of today. They provided a basis and framework for the development and administration of a park, and were periodically revised and updated.

At least in its draft form, the 1971 Glacier Bay master plan melded traditional NPS visitor-oriented philosophy with the growing national environmental consciousness, and it contained solid references to the monument’s perceived scientific values. Quoting the draft: “Monument ecosystems must be maintained not only for their scenic value ... but also because the vast stores of information they contain may someday be needed.” Glacier Bay

N.M., wrote the authors, was an “irreplaceable resource” which would be maintained, while providing “appropriate” public use. Commercial fishing in the monument was not questioned. The authors suggested, however, that the commercial fishing issue would need to be studied thoroughly “when the monument’s status is changed to that of a national park.” The clear implication was that unofficially national monuments were considered second-class institutions, and not managed to the level of national parks. The authors also noted in the draft that commercial fishermen, with prospectors, seal hunters and researchers, constituted about a third of the visitors to the monument.<sup>308</sup>

#### 1971 Wilderness Study

As previously stated, the Wilderness Act (1964) was viewed broadly by the NPS as an unwanted intrusion into its authority to manage national park system lands. It required that the Secretary of the Interior study areas in the national park system for possible preservation as wilderness, and make a report to the president within 10 years. The work at Glacier Bay was done under Superintendent Bob Howe. Though Howe was involved in commercial fishing, he was also an ardent advocate for wilderness.

In August 1971 the NPS released *Wilderness Study, Glacier Bay National Monument*. A second report, *Wilderness*

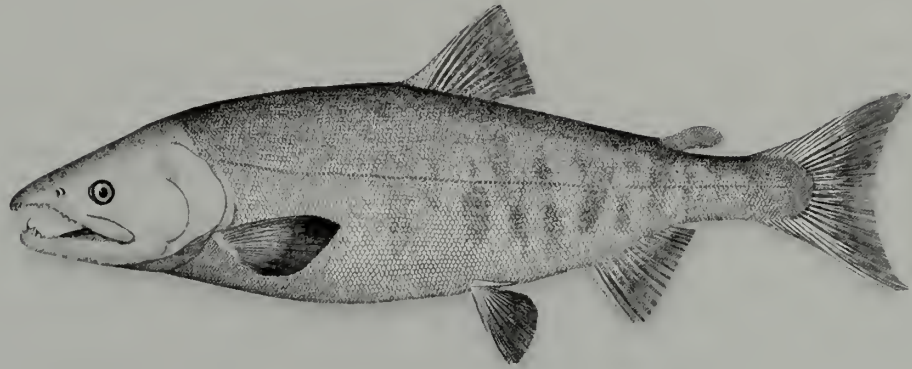
<sup>55</sup> Dalton provided Howe with a door key and gave him permission to stay in the cabin.

*Recommendation, Glacier Bay National Monument*, was completed a year later. In it, the NPS recommended wilderness status for basically all of the land areas of the monument, plus the waters of the Hugh Miller/Charpentier Inlets complex (including Scidmore Bay) and Adams Inlet.<sup>309</sup> There was virtually no commercial interest in Adams Inlet, although a pair of commercial operators had recently caught profitable quantities of coonstripe shrimp in Hugh Miller Inlet. The NPS anticipated the economic effect on the fishermen and the industry of a possible wilderness designation that would result in the termination of this fishery to be “minimal and unmeasurable.”<sup>310</sup> The remainder of Glacier Bay’s water area was not proposed for wilderness because of the “existing use of motor-powered vessels and commercial fishing activities.” “Commercial fishing,” the NPS wrote, “[is] established by custom and [is] to continue.”<sup>311</sup>



# Fish Report No. 3:

Limited Entry—Magnuson Act Fosters a Japanese Market for Alaska  
Seafood—Tanner crab



### Limited Entry

In large part due to the development of the oil industry, Alaska's population was growing rapidly during the early 1970s. The number of people entering the commercial fishing industry was also growing. The Alaska Department of Fish & Game attempted to limit catches to what it considered sustainable, but the effect of each new entrant into a fishery was to reduce the average catch—and income—of all fishermen. This was sometimes to the extent that few could earn a decent income. The situation was especially pronounced in the gillnet salmon fishery, which was relatively inexpensive to enter and did not require as much fishing savvy as many other fisheries. The excess gear in the water also presented a challenge to sound fisheries management: the effort during an “opener” (a segment of a fishing season in a particular location) could be so intense that it was difficult to monitor the catch, and overfishing sometimes occurred.

To rectify this situation, Alaska's legislature passed the Limited Entry Act in 1973.<sup>312</sup> The act was designed to regulate and control entry into Alaska's fisheries to promote “economic health and stability.”<sup>313</sup> Generally, the Limited Entry Commission determined how many fishermen each fishery could support and issued transferable permits to those who met requirements for historical participation in the fishery. The program was implemented in the different fisheries over many years, and affected the structure of Glacier Bay's commercial fisheries. The salmon power troll fishery was limited in 1975. It was a different story for the salmon hand troll fishery. At the time the salmon power troll fishery was limited, managers considered the hand troll fishery to be a “relatively casual, part-time, and low-effort fishery.” The managers hoped that by retaining open access to the hand troll fishery, they could provide entry level opportunities for the young and opportunities for supplemental income for older persons, all while allowing part-time fishermen to pursue their commercial fishing activities. The fishery did not stay casual and low-impact. Significant increases in the number of participants and effort each year from 1975 through 1978 led to a decision in 1979 to impose limited entry in the fishery.<sup>314</sup> Hand trolling remains particularly important in rural

Southeast Alaska, where opportunities for full-time employment are scarce.

The Tanner and king crab pot fisheries were placed under a limited entry program in 1984 (see page ?), but it was not until 1995 that entry into the Dungeness crab fishery was limited. The halibut fishery is managed by Department of Commerce's National Marine Fisheries Service (NMFS), which chose to regulate it not with a limited entry program but under an individual transferable quota share program that was established in 1995.

### Magnuson Act Fosters a Japanese Market for Alaska Seafood

Widespread public concern about overfishing, and concern over technologically sophisticated foreign fishing fleets making substantial catches in traditional fisheries along America's coasts, led to the passage in 1976 of the Magnuson Act.<sup>TT 315</sup> With this legislation the U.S. asserted sovereign rights to an Exclusive Economic Zone (EEZ) that extended 200 nautical miles from its coastlines. The legislation became effective in March 1977. As was its intent, foreign fleets were eliminated, and a gradual “Americanization” of the fisheries began. Among those who had previously fished Alaska's rich fishing grounds heavily were the Japanese. Denied access to American waters, the Japanese sought to secure supplies of traditional seafood in part by investing in Alaska's fishing industry. Processing facilities were purchased outright, or generous loans were made to U.S. processing companies. The loans were coupled with right-of-first-refusal (ROFR) agreements for the seafood produced. Prices of fish were bid up to unheard-of heights. In Southeast Alaska the Japanese were primarily interested in sockeye and coho salmon, salmon roe, sablefish (“blackcod”) and “bairdi” Tanner crab (*Chionoecetes bairdi*).<sup>UU</sup>

### Tanner Crab

The impact on Glacier Bay proper of the Japanese demand was almost completely limited to Tanner crab. Though the species was shunned in the U.S. in favor of king crab, it was much appreciated in Japan. Tanner crab is traditionally given as a gift at the New Year and during “Golden Week” in the spring. Prior

<sup>TT</sup> The legislation was amended with substantial input by Alaska Senator Ted Stevens in 1996, and is now commonly referred to as the Magnuson-Stevens Fishery Conservation and Management Act.

<sup>UU</sup> There are two varieties of Tanner crab: *Chionoecetes bairdi*, which is discussed above, and the smaller *Chionoecetes opilio*, which is generally caught in the Bering Sea and often marketed domestically as “snow crab.”



Figure 21: Tanner crab vessel *Capri*, on a snowy but calm day in Glacier Bay. Weather often hampered fishing during this winter fishery. (NPS collection, Bartlett Cove, Alaska)

to the Japanese interest, the harvest of Tanner crab in Alaska had been miniscule.

Tanner crab are true crab (brachyurans) that are found in the eastern North Pacific Ocean and Bering Sea. They feed on a wide variety of marine life that includes worms, clams, snails, other crustaceans, and fish parts. Female Tanner crab deposit 85,000 to 424,000 eggs in an abdominal clutch, where they are fertilized by the male. The fertilized eggs are then extruded onto the female's abdominal flap to incubate for about a year. Young larvae are initially free-swimming, but settle to the ocean floor after about two months. Female crab are mature after numerous molts over approximately five years. Males take about a year longer. Current regulations allow only male Tanner crab with a carapace width of more than 5-1/2 inches to be retained by commercial fishermen. Male Tanner crab of commercial size weigh about 2 to 4 pounds. Females are considerably smaller. Tanner crab are prey species for halibut as well as sea otters.

Petersburg is home port to much of the fleet, which is comprised mostly of salmon seiners and tenders. In 1984, the state's Commercial Fisheries Entry Commission capped the number of fishermen allowed to participate in Southeast Alaska's Tanner crab pot fishery. Tanner crab are caught during the

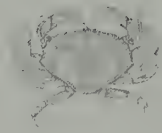
winter months, sometimes with king crab pots, but predominately with lighter, top-entry conical or pyramid-shaped nesting pots that have the advantage of occupying less deck space (see Figure 21). Prior to 1996, ADF&G regulations limited individual Tanner crab fishermen in Southeast Alaska to fishing a maximum of 100 pots. In 1996 the maximum was reduced to 80 pots.<sup>316</sup>

There were some efforts in the 1960s by the federal and state governments to assess the extent of the Tanner crab resource and to develop processing technology. Some exploratory fishing for Tanner crab was done in 1962 in Glacier Bay by a private vessel contracted to the U.S. Fish and Wildlife Service.<sup>317</sup> Some Tanner crab were also caught by king crab fishermen during the 1960s, and in 1970 the vessel *Nova* prospected for Tanner crab in lower Glacier Bay.<sup>318</sup>

Spurred by the Japanese market, Pelican Cold Storage with the vessel *Gulf Maiden* successfully pioneered the Glacier Bay Tanner crab fishery in the late 1970s. There was, however, a problem with some of the Tanner crab from Glacier Bay: crab caught in the Bay's silty waters had dull, silty shells, which the Japanese—ever conscious of the appearance of food—found unattractive. To be sure, not all

the waters of Glacier Bay are silty, and waters that were silty in the 1970s may be less so today. Nevertheless, the Japanese market rejected Tanner crab from Glacier Bay. Pelican Cold Storage continued to purchase Glacier Bay caught Tanners, but paid a lower price than for “clean” crab. Silty-shelled crab were processed for their meat, which was sold on the domestic market.<sup>319</sup> The central area of Glacier Bay provides the majority of the bay’s Tanner crab.

Though a secondary fishery for most fishermen, the Tanner crab fishery—with an annual season of less than two weeks—eventually became Glacier Bay’s most valuable, as measured by the dollar value of the catch.



# Chapter 5: Early Groundwork Toward a Glacier Bay Fisheries Policy

## Tom Ritter Succeeds Bob Howe as Superintendent

Superintendent Bob Howe retired in the spring of 1975. In retirement Howe divided his time between a cabin in Gustavus and a home in Friday Harbor, Washington. He enjoyed being active, and at Gustavus often helped his close friend, Jim Mackovjak, who owned Point Adolphus Seafoods. Howe particularly liked to be on the dock—which offered fresh air, a view and a chance to be among the fishermen.

Tom Ritter arrived at Bartlett Cove in June 1975. As Glacier Bay's superintendent, Ritter was preoccupied mostly with a controversial mining issue: the Newmont Mining Co. was seriously studying the feasibility of establishing a major nickel-copper mining operation within the monument. Development of the prospect, which was located beneath the Brady Glacier, would have required the establishment of a community of some 4,000 at Dixon Harbor and the annual disposal of some six million tons of waste rock. Another issue high on Ritter's agenda had to do with cruise ships, particularly their effect on humpback whales. A study in Glacier Bay by Juneau researchers Chuck and Virginia Jurasz done while Ritter was superintendent determined that cruise ships appeared to have a significant impact on humpback whales.<sup>320</sup> The concerns of the politically powerful cruise ship industry could not be taken lightly by the NPS. Neither could those of the national environmental groups for whom "Save the Whales" had become a rallying cry.

Because commercial fishing was specifically allowed by NPS policy, and because the use of Glacier Bay by commercial fishermen was declining (as measured by the number of vessels that fished), the commercial fishing issue was of low priority while Ritter was superintendent.<sup>321</sup> This is not to say that the marine environment was ignored.

Ritter was a firm believer in the need to understand the relationship and interaction of all factors affecting an ecosystem. A considerable amount was known about Glacier Bay's terrestrial ecosystem, but Ritter recognized the importance of understanding Glacier Bay's marine ecosystem as well. With his encouragement, the NPS in 1978 commissioned the first

conceptual model of Glacier Bay's marine ecosystem.<sup>322</sup> *The Glacier Bay Marine Ecosystem: A Conceptual Ecological Model* was the work of Lynne Zeitlin Hale, who was affiliated with the University of Rhode Island, and R. Gerald Wright, an NPS scientist. The report was completed in 1979.<sup>323</sup> Though crude by today's standards, it was an attempt to abstract from existing information and general ecosystemic reasoning a framework for better understanding Glacier Bay's marine ecosystem. The model was also intended to serve as the basis for future studies, which, given the focus of the time, would likely have involved humpback whales.

No quantitative analysis was provided, but the report looked at pathways of potential impacts—such as commercial fishing—on the ecosystem. The major impacts of commercial fishing, according to Hale and Wright, were probably species-specific. The researchers suggested that "The role of these potentially impacted species in the complex web of this marine ecosystem should be one of the Park Service's highest research priorities."<sup>324</sup>

Very significantly, the findings of the Hale-Wright report influenced Ritter during the final days of the Alaska National Interest Lands Conservation Act (1980) negotiations to suggest that the Beardslee Islands area be designated as wilderness. (Ritter was at the time superintendent of Voyageurs N.P., but he was in Washington, DC on Park Service business and, as someone familiar with Glacier Bay, asked his advice.

## Superintendent John Chapman

John Chapman replaced Tom Ritter at Glacier Bay in 1978. Cruise ships and whales were the reigning issues of his superintendency. At the hand of James Watt, President Ronald Reagan's Secretary of the Interior, Chapman's efforts to restrict cruise ships in Glacier Bay to protect endangered humpback whales reportedly cost him his position, as well as that of the regional director.

Although commercial fishing was actually declining in Glacier Bay during Chapman's superintendency, it was during this period (1978-1983) that the NPS first used its



authority to eliminate a commercial fishery: commercial shrimping in Glacier Bay proper was prohibited to protect a food source for humpback whales. Additionally, the first substantial research report on Glacier Bay's marine ecosystem was completed under Chapman's watch. And while Chapman was superintendent, the DOI, for the first time, comprehensively considered the appropriateness of commercial fishing in the national park system. In addition, Congress during his tenure passed the Alaska National Interest Lands Conservation Act (ANILCA), which expanded Glacier Bay N.M. and designated it as a national park and preserve. Under ANILCA the Beardslee Islands area and other waters of Glacier Bay N.P. were designated as wilderness, where commercial fishing legally should have, but did not, come to a close. Finally, while Chapman was superintendent, Tom Traibush and Charlie Clements cast their first commercial crab pots into the waters of Glacier Bay, and Dan Foley established a small seafood processing company, Icy Passage Fish, in Gustavus.

#### **The NPS's Policy—Official and De Facto—on Commercial Fishing in Glacier Bay**

In the spring of 1962, to blunt criticism that the NPS was failing to adequately protect natural resources in the parks, Secretary of the Interior Stewart Udall called for thorough, independent studies of NPS science and resource management. Udall appointed a committee, the Advisory Board on Wildlife Management, to recommend a rational and uniform wildlife management program for the national park system. The committee consisted of distinguished wildlife scientists and conservationists, and was led by A. Starker Leopold, the son of Aldo Leopold, the famous wildlife biologist. As the primary goal of park management, what became known as the "Leopold Report" (1963) recommended that "the biotic associations within each park be maintained, or where necessary, recreated, as nearly as possible in the condition that prevailed when the area was first visited by white man."<sup>325</sup> Udall declared the Leopold Report to be the official policy of the NPS, though, according to some, it competed with the venerable Lane letter of 1918.<sup>326</sup> Today's NPS policy on both commercial and

sport fishing may have evolved mostly from the Leopold Report.

NPS policy adopted in 1966 called for the management of natural areas of national parks "... so as to conserve, perpetuate, and portray as a composite whole the indigenous aquatic and terrestrial fauna and flora of the scenic landscape."<sup>327</sup> This policy, however, was clearly not reflected in NPS commercial fishing regulations updated later that year.

In September 1966, the DOI gave notice of its intent to "clarify and bring up to date the regulations applicable to the areas administered by the National Park Service, as well as to bring them into conformity with the basic policies of the Department of the Interior relating to administration and preservation of natural resources in areas of the National Park System."<sup>328</sup> The revised and recodified regulations were published in the *Federal Register* in late December. Of fishing, the new regulations stated only the following:

36 C.F.R. § 2.13(a) (1967): Unless further restricted herein or by special regulations, fishing shall be in accordance with the laws and regulations of the State or legal subdivision thereof, within whose exterior boundaries a park area or portion thereof is located, and such laws and regulations which are now or may hereafter be in effect are hereby adopted and made a part of these regulations.<sup>329</sup>

Gone was the specific reference that allowed commercial fishing in Glacier Bay N.M. But it was unclear whether the new regulations applied to sport fishing, commercial fishing, or both. Another regulation that addressed business operations in park areas offered some clarification:

36 C.F.R. § 5.3 (1967): Engaging in or soliciting any business in park areas, except in accordance with the provisions of a permit, contract, or other written agreement with the United States, except as such may be specifically authorized under special

<sup>325</sup> Under NPS policies developed in 1964, "natural areas" were those areas managed by the agency primarily for their natural values, as opposed to areas managed for recreational or historical values. Glacier Bay N.P. in its entirety is managed as a natural area. In response to the 1978 "Redwoods Amendment," the NPS jettisoned its tri-partite approach.

regulations applicable to a park area, is prohibited.<sup>330</sup>

Commercial fishing operations are indeed businesses, and under this regulation were clearly illegal without specific authorization. However, since NPS officials at Glacier Bay N.M. at the time assumed that the State of Alaska controlled Glacier Bay's waters, these regulations were not enforced. Since the 1960s, 36 C.F.R. § 5.3 has not been changed.

Commercial fishing in Glacier Bay may not have been an issue in the 1960s, but commercial fishermen at Glacier Bay Lodge definitely became one. Commercial fishermen work a hard and dangerous job, and when not working they are known for their ability to party. Sometimes during the usual weekly periods closed to salmon seining in Icy Strait and Cross Sound, seiners would gather at Glacier Bay Lodge.<sup>ww</sup> The vessels would tie up overnight to the NPS dock and the skippers and crews—each vessel had a crew of about 5—would head up to Glacier Bay Lodge, which in those years served liquor at a bar. A night of what Ranger Russ Cahill termed “drunkenness, vandalism, and petty thievery” often followed, and the NPS threatened to (but did not) close the dock to the seine fleet.<sup>331</sup>

Partying fishermen at Glacier Bay Lodge in 1967 actually contributed to the Beardslee Islands being designated as wilderness more than a decade later (see Figure 22). The weather was nice during a closure and some 20 seine vessels, each with a large seine skiff on its stern, rafted up at the NPS dock. It was a sight to see, and many photographs were taken. One of those photographs was later used by wilderness advocates as an example of the powerful fishing fleet that might ravage the Beardslee Islands should they not be protected as wilderness. Though it worked, the claim was an exaggeration: there are very few salmon in the Beardslees, and even less interest in catching them.

In 1970, to remind commercial fishermen of the conduct expected of them when in Glacier Bay N.M., Ranger Russ Cahill penned an article for *National Fisherman*. Cahill explained some of the monument's history, the NPS's responsibility to protect its “wilderness aspects,” and briefly noted the different fisheries that occurred. He then reminded fisher-

men that poor behavior at Glacier Bay Lodge would not be tolerated, and cautioned them about encountering bears while beachcombing. Cahill also wrote that rangers watched the activities of a few fishermen very closely. The monitoring had nothing to do with fishing: some fishermen were known to take pot shots at anything that moved, including sea lions. (Sea lions were first sighted in Glacier Bay proper in the early 1970s. Cahill ended the piece with the following: “Most fishermen will agree that a nature preserve, with its unpolluted streams, is a welcome thing these days. The Park Service believes that with a little common sense and effort, fishermen and park managers can work together to preserve one of America's greatest natural areas: Glacier Bay National Monument.”<sup>332</sup>

Cahill recalled later that NPS rangers monitored the marine band on the radio, and it wasn't unusual to render assistance to commercial vessels that were broken down or had an injured crewmember.<sup>333</sup> In those days, fish prices were generally low, and many fishing vessels were of marginal quality. Breakdowns were fairly common.

In all, the NPS's public attitude toward commercial fishing in Glacier Bay in 1970 could be summed up as: “Welcome, commercial fishermen. Be careful and please obey the rules.” By allowing a commercial industry to develop around Glacier Bay's fisheries resources, the NPS was unwittingly setting itself up for a difficult and controversial fight 20 years later, when it decided the time had come to phase commercial fishing out of the Bay.

The NPS's policy for the management of natural areas was further defined in 1975: “The Service will perpetuate the native animal life of the parks for their essential role in the natural ecosystems. Such management ... will strive to maintain the natural abundance, behavior, diversity, and ecological integrity of native animals...”<sup>334</sup> This written policy had no *de facto* effect on the NPS's actual stewardship of fisheries resources as they related to commercial fishing in Glacier Bay N.M. Nor did the regulation that forbade engaging in business in park areas.

To the contrary of most stated policies, a 1977 NPS briefing paper on commercial fishing in existing and proposed Alaska national

<sup>ww</sup> The major salmon seine fisheries in Icy Strait and Cross Sound were closed by the State of Alaska in 1974 for management reasons.

parks specifically stated that commercial fishing was allowed. The policy seemed unambiguous:

Where it has traditionally occurred in the past and where it is not in direct conflict with the perpetuation of other species of life or with the purposes for which the areas are established, commercial fishing will be permitted to continue under State and Federal regulations in all saltwater areas and in inland waters considered navigable.

The briefing went on to state that commercial fishing was permitted in Glacier Bay N.M., and that it was under the “control” of the state.<sup>335</sup> The NPS February 1978 *Management Policies Handbook* simply stated that “Commercial fishing is permitted only where authorized by law.” To the NPS, this meant authorized by Federal law, but the State could also interpret it to read fishing was authorized under its law.

The March 1978 legislation that expanded Redwood N.P. contained wording that reaffirms the NPS’s 1916 Organic Act’s statement of purpose. Heeding this reaffirmation, the NPS embarked upon a thorough revision of regulations in 36 C.F.R. Parts 1 and 2. Regarding commercial fishing, in April 1978, Robert Herbst, Assistant Secretary of the Interior for Fish and Wildlife and Parks in the Carter administration, instructed the directors of the Fish and Wildlife Service (FWS) and the NPS to convene an ad hoc group of fisheries research and management specialists to review and evaluate NPS fisheries policies. The purpose of the review and evaluation was “to gain an understanding of the National Park Service’s fisheries management prerogatives and philosophy while simultaneously providing a fresh, unbiased, and critical analysis of the policies, operations and current status of the fisheries program within the National Park Service.”<sup>336</sup> All task force members were FWS employees, possibly because fisheries research and management talent was scarce in the NPS. Within the task force, the Alaska Area Work Group was detailed to provide input from Alaska.<sup>337</sup>

In March 1979 the FWS Ad Hoc Fisheries Task Force submitted its report.<sup>338</sup> Fundamen-

tal was the following statement: “we believe commercial fishing to be an inappropriate activity in the entire National Park System except where it reflects cultural and historical values of the area.” To the task force, commercial fishing was a “non-conforming use of aquatic resources,” particularly when it occurred in “natural zones,” where the “first priority of use of fish resources ... should be the preservation and maintenance of natural ecosystems processes.”<sup>339</sup> The Task Force defined natural zones as lands and waters managed to ensure that natural resources and processes remain largely unaltered by human activity.<sup>340</sup> All of Glacier Bay N.P. fell into this category.

The task force faulted the NPS for the relatively low priority generally given aquatic resource issues, minimal in-house fishery expertise, an inadequate data base, and a lack of aggressive leadership regarding aquatic resources. A consequence of these deficiencies was that individual superintendents “developed diverse interpretations of national fishery policy.”<sup>341</sup>

The task force believed that, except for token cultural and historical fisheries allowed for their interpretive value, commercial fishing should be phased out of natural zones specifically and all other areas generally.<sup>342</sup> It thought the NPS had the authority to do so in most areas, and that legislation would be appropriate where such authority was lacking. To bring about such change, however, would require “aggressive leadership” and “strong direction” from Washington, DC.<sup>343</sup>

The recommended method to phase out commercial fishing involved the issuance of what later became known a “lifetime access permits” (LAPs) to individual fishermen. Permits would be issued only to fishermen already active in a fishery, would be non-transferable, and would terminate once the owner ceased fishing activity in a park because of retirement, disability, or death.<sup>344</sup>

In all, the immediate effect of the Ad Hoc Fisheries Task Force on Glacier Bay’s commercial fisheries was minimal, limited to a further defining of the DOI’s view of commercial fishing in national parks and monuments, and suggesting the use of LAPs as a means to phase out commercial fishing.

The Carter administration’s consideration of a gradual phase-out of commercial

<sup>335</sup> In referring to the 1978 amendment to the Park Service’s Organic Act, the U.S. District Court in 1997 (*AIVA v. Jensen*) concluded that there was no reason to suppose that “nonconforming” means “in derogation of park values and purposes.” The conclusion of the court was upheld by the Ninth Circuit Court of Appeals.



fishing in the national park system ran into a wall on November 4, 1980 when Ronald Reagan was elected president and the Republican Party took control of the Senate for the first time in 26 years. Reagan was a big supporter of developing the nation's natural resources, which he thought was hindered by excessive federal regulation.

Only three days after the election, William Robinson, a fishery biologist with the NMFS Alaska office, wrote to Ross Kavanagh, the fishery biologist in the NPS Alaska office. Perhaps sensing a change in the political winds, Robinson opined that while a phase-out of commercial fishing might be an appropriate policy in a great many national parks and monuments, Glacier Bay N.M. was an exception. In much of Glacier Bay N.M. commercial fishing was the primary economic activity, and its phase-out would alter the lifestyles and severely depress the economies of Gustavus, Hoonah, Pelican and Elfin Cove. As well, a phase-out could be "extremely damaging to developing State-Federal cooperative fishery management." Robinson also warned that a phase-out should not be justified solely on "philosophical grounds"—known more generally as "park values." He recommended that the situation be addressed through the establishment of a work group consisting of representatives of the NPS, NMFS and State of Alaska. The group would identify areas where commercial fishing conflicted or potentially conflicted with other uses of Glacier Bay N.M. or posed any threat of resource damage. It would then formulate a strategy to deal with any such problems and enter into a cooperative agreement to determine which of the members would regulate specific sectors of the commercial fishing industry in Glacier Bay.<sup>345</sup> No such work group was established or cooperative agreement ever signed.

### **Alaska National Interest Lands Conservation Act**

Jimmy Carter may have been a lame duck president in December 1980, but with Congress he was about to leave a huge and

enduring mark on Alaska that had profound implications for commercial fishing in Glacier Bay.

On December 2, as one of his last official acts, Carter signed the Alaska National Interest Lands Conservation Act (ANILCA) into law.<sup>346</sup> The National Parks and Conservation Association (NPCA) called ANILCA the "conservation victory of the century."<sup>347</sup>

ANILCA had its origin a decade earlier in the need to move newly-discovered oil from Alaska's North Slope through a pipeline to an ice-free saltwater terminal at Valdez, in Prince William Sound. The 800-mile route passed through lands claimed by Alaska's Natives. To settle these claims, Congress in 1971 passed the Alaska Native Claims Settlement Act (ANCSA), which was engineered by Alaska's Senator Ted Stevens. The legislation addressed Native claims in all regions of Alaska, and established for-profit Native corporations that were allowed to select some 44 million acres of government land and divide a cash payment of nearly a billion dollars. A provision in the legislation—Section 17(d)(2), added to gain the support of the environmental community—authorized the Secretary of the Interior to withdraw up to 80 million acres in Alaska for possible inclusion into the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers systems. Final determination of the lands to be included would be made by Congress. When it finally became law, ANILCA had selected in excess of 100 million acres of lands for inclusion into conservation systems. Among numerous other provisions of the legislation, Glacier Bay N.M. was re-designated as Glacier Bay National Park and Preserve.<sup>348</sup> ANILCA also designated 41,367 marine acres of Glacier Bay proper as wilderness, including the waters of the Beardslee Islands, which were critical to the local Dungeness crab fishery. How the Beardslee Islands became designated wilderness is a story that, in turn, had its foundation in the Wilderness Act.<sup>348</sup>

The Glacier Bay wilderness study required by the Wilderness Act was completed by the NPS in August 1971, and the agency's

<sup>345</sup> In 2000, the National Parks and Conservation Association changed its name to National Parks Conservation Association.

<sup>346</sup> Although national monuments and national parks are ostensibly managed under the same regulations, national monuments, which are created by presidential proclamations, are sometimes erroneously viewed to be second tier components of the national park system, behind the national parks, which are created by acts of Congress. In designating of Glacier Bay National Monument as Glacier Bay National Park, Congress proclaimed that the area was of high public value and was to be maintained in an "unimpaired" condition for the enjoyment of present and future generations.



Figure 22: Salmon seine boats tied up at the NPS Bartlett Cove dock, ca. 1970. The roof of Glacier Bay Lodge is visible in the background. (courtesy Charles V. Janda)

recommendation submitted to Congress in August 1972. The recommendation, which did not recommend wilderness designation for the waters of the Beardslee Islands area was considered the basis for Congressional action under ANILCA.<sup>349</sup> Furthermore, according to former Superintendent Bob Howe, the NPS at Glacier Bay had determined that the Beardslees were not suitable for designation as wilderness, mostly because of their proximity to all the noise and activity at Bartlett Cove. Another consideration was the ongoing Dungeness crab fishery, which at that time was pretty much limited to Duke Rothwell on the *Adeline*.<sup>350</sup>

At some point late in the debate over ANILCA, however, some in Congress determined that Glacier Bay might need more wilderness than recommended by the NPS. Likely they were persuaded by the Alaska Coalition, an umbrella group organized in about 1971 that included a broad array of conservation, sporting, religious, labor, and other groups.

The Alaska Coalition's wilderness wish list for Glacier Bay included those recommended by the wilderness study plus the Beardslee Islands.

At the time of the final ANILCA debates, former Glacier Bay superintendent Tom Ritter was superintendent of Voyageurs N.P., and in Washington, DC on NPS business. As someone familiar with Glacier Bay, he was asked (perhaps by NPS Director Russ Dickenson) for his advice on areas that might be considered for wilderness designation. Shown a map of Glacier Bay, Ritter pointed to the Beardslee Islands. He suggested the Beardslee Islands should be designated wilderness because:

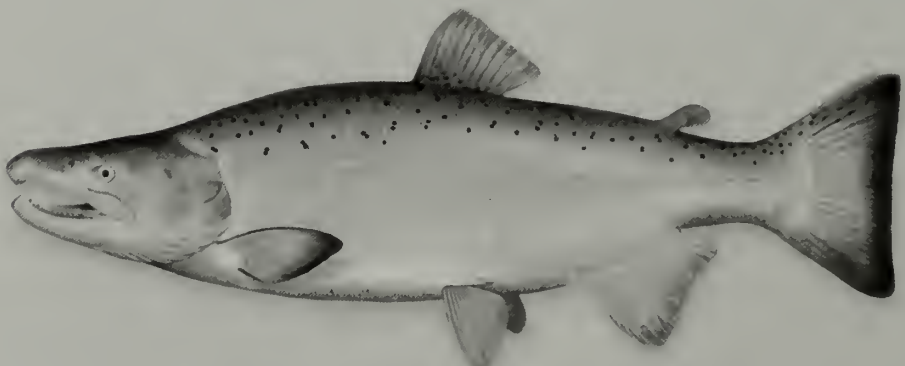
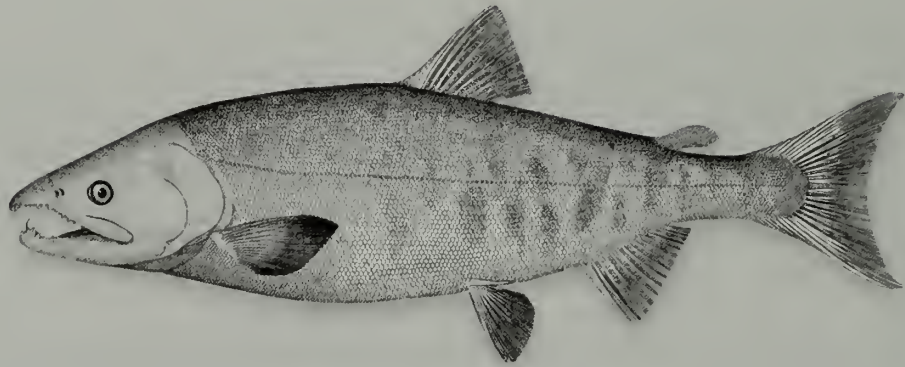
- They were environmentally important. While Ritter was superintendent, scientists Lynne Hale and Gerald Wright began work on the first major formal study of Glacier Bay's marine ecosystem.<sup>351</sup> The report showed the importance of the Beardslee Islands marine ecosystem.

- They were threatened by commercial fishing interests. Ritter was shown a photograph of fishing boats at Bartlett Cove and given the impression that commercial fishing would decimate the Beardslee Islands fisheries resources. Likely the photograph was the one taken by Chuck Janda in 1967 showing a number of salmon seine boats rafted off the dock at Bartlett Cove. When the photograph was taken, salmon seining was permitted in all of Glacier Bay. The seiners, however, had been fishing in Icy Strait and Cross Sound, and had come to Bartlett Cove during a closure to party at Glacier Bay Lodge.
- They were attractive and offered an economical opportunity for wilderness kayaking. Although Ritter did not spend time in the Beardslees while superintendent, he had twice returned to Glacier Bay, and each time thoroughly enjoyed kayaking into the Beardslees.<sup>352</sup>

Congress heeded Ritter's recommendations, and the Beardslees were designated as wilderness under ANILCA. The designation was controversial from the outset, and it would be nearly 20 years before the issue was resolved.

# Fish Report No. 4:

The Dungeness Crab Industry Develops in Gustavus—Dan Foley—Tom Traibush— Charlie Clements



### Dan Foley

Dan Foley can be credited with pioneering the modern seafood processing industry in Gustavus. Foley came to Gustavus in 1976, after a stint working on the Trans Alaska Pipeline. In 1978 he journeyed to Maine, where he purchased a used 33-foot wooden-hulled lobster boat. He renamed the vessel *Margaret Mary* in tribute to all the Sister Margaret Marys he'd had as teachers in Catholic school, and trailered it to Haines, about 100 miles by water from Gustavus. Foley's original plan was to fish shrimp in Lituya Bay, but he decided that Dungeness crab might afford a better opportunity for success. However, Pelican Cold Storage, the only buyer of Dungeness crab in the area, was not interested in purchasing crab he might catch because of its exclusive arrangement with Duke Rothwell. Foley decided to market crab on his own. In 1979, he flew to Seattle, rented a car, and drove down the coast to San Francisco, stopping everywhere along the way that he felt he could learn something about Dungeness crab. In San Francisco he learned that Southeast Alaska's summer Dungeness crab season coincided with the Bay Area's main tourist season. Importantly, the Dungeness crab fisheries in Washington, Oregon and California were winter fisheries, so vendors in San Francisco relied on frozen crab for the summer trade. He also learned that the "crab feed" season in the Bay Area coincided with the fall Dungeness crab season in Southeast Alaska.

Foley had found a ready market for his crab. Though they are often considerably more expensive, live (or freshly cooked) crab are generally considered superior to frozen crab, and would be appreciated in the affluent Bay Area.

Foley returned to Gustavus and established Icy Passage Fish in a World War II-era building at the airport. His business plan was to ship live crab—initially those he himself caught—to San Francisco via Alaska Airlines, which served Gustavus during the visitor season. During the fall season, crab would be transported to the Alaska Airlines's facility in Juneau on small commuter planes (see Figure 23). Although Icy Passage Fish did some freezing of fish with makeshift facilities, its core operation remained shipping live Dunge-



Figure 23: Owner of Icy Passage Fish, Dan Foley, loads live crab into a small plane at the Gustavus airport. The shipment was transferred in Juneau to Alaska Airlines for transport to markets in the Lower-48. (courtesy James Mackovjak)

ness crab. The *Margaret Mary* was fished by Foley and several others in Dundas Bay, Glacier Bay and Icy Strait.<sup>AAA 353</sup>

### Tom Traibush

Tom Traibush came from Colorado to work at Glacier Bay Lodge in 1977. In 1978 or 1979, using a sport pole, he fished halibut commercially from a skiff. His humble entrance into Dungeness crab fishing came in 1981 when he purchased 15 or 20 crab pots. Traibush worked on the Glacier Bay Lodge tour boat *Thunder Bay* during the day and fished crab in Bartlett Cove and the Beardslee Islands during his off hours, pulling pots by hand from a 16-foot open skiff powered by a 10-horsepower outboard motor. Most of his crab were sold to Glacier Bay Lodge, and the remainder were sold to local tour boats. Traibush wanted to expand his operation, and in 1982 he approached Dan Foley, owner of Icy Passage Fish (see above), about the possibility of purchasing his crab. An agreement to do so was reached, and Traibush quickly upgraded to the *Fat Man*, a new 15-foot heavy-duty Kodiak seine skiff powered by a 35-horsepower outboard motor and equipped with an electric pot hauler. He also increased his pot count to 50 or 60.<sup>354</sup>

<sup>AAA</sup> In 1994, Gregg Renkes, an aide to Senator Murkowski, characterized Foley's business as a model for Alaska.



Figure 24: Dungeness crab fishermen Charlie Clements just in from the Beardslee Islands with his catch. (courtesy Deb Woodruff)

### Charlie Clements

A native Alaskan, Charlie Clements mostly worked seasonal construction jobs. During the summer of 1980, on his 40<sup>th</sup> birthday, Clements and his friend (and later wife), Deb Woodruff, were kayaking in Secret Bay, in the Beardslee Islands. They noticed big Dungeness crab walking their sideways crab walk across the bottom. Duke Rothwell had been fishing the Beardslees for years, and was likely letting Secret Bay “rest” for a spell to let the size and quality of the crab increase. Clements was looking for a change in his life, and decided then and there that he’d be a commercial crab fisherman (see Figure 24). His previous experience with commercial fishing was a season spent hand trolling from a sailboat and fishing commercially for halibut with a sport pole from a small skiff. Clements purchased the 38-foot *Rust Bucket*, a steel lifeboat that a group of young fishermen had converted into a hand troller. It was slow and hardly handsome, but fairly roomy and cheap. He began fishing in 1981 with 40 rusty crab pots. Fishing in Secret Bay was initially very good: Clements recalled one pot that came up absolutely stuffed with 55 large male (he estimated they averaged three pounds) Dungeness crab. Clements sold his first load of crab in Juneau, a long day’s boat journey each way in good weather. Not long after, he established a local market with Icy Passage Fish and later with Point Adolphus Seafoods.

Traibush and Clements shared humble entries into the Dungeness crab fishing business. It was just a short while, however, before both Clements’ and Traibush’s Dungeness operations ranked among the most productive in Southeast Alaska. Part of the reason for their success was the high quality of the Dungeness crab in Glacier Bay. Dungeness crab differ between locations, and those in Glacier Bay had a solid reputation as being large, hard-of-shell, and clean, all highly-marketable attributes on the West Coast live crab market.

But there was more. The waters of the Beardslee Islands are relatively well-protected, an important factor for small-boat fishermen who sometimes work late into the stormy fall season. Also, for fishermen based in Gustavus, the Beardslees were easily accessible from Bartlett Cove, particularly at high tide, when one could enter or exit the Beardslees directly from Bartlett Cove through a short tidewater channel that is known locally as “the gut.”

The local knowledge acquired by these fishermen (and others) was another significant factor in their success. Unlike the big, relatively uniform, open areas such as the Gustavus flats (along the Icy Passage/Icy Strait mainland beach from Falls Creek to the Good River) that are usually fished with long strings of pots, the Beardslee Islands are a complex array of channels, bays and inlets of varying depth. The Dungeness crab fishery there was more of a

“pothole” fishery where local knowledge, including an understanding of seasonal variables, was a key to success.

Traibush and Clements were smart and worked hard, but the acknowledged master of fishing Dungeness crab in the region remained Duke Rothwell. Until Traibush and Clements entered the fishery, he really hadn’t had much competition. Other than occasionally remarking that it was “gettin’ hard to make a living around here,” Rothwell was very neighborly with the relative upstarts.<sup>355</sup>



## Chapter 6: Post-ANILCA Accommodation of Commercial Fishing at Glacier Bay

### The Humpback Whales Must Eat

Its worldwide population depleted by commercial whaling, the humpback whale (*Megaptera novaengliae*) was listed as an endangered species in 1970. Three years later the Endangered Species Act (ESA) became law. The fundamental purpose of the ESA is to conserve the ecosystems upon which endangered or threatened species depend. The act requires each federal agency to ensure that its actions, in the words of the National Marine Fisheries Service (NMFS), “do no not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat of such species.”<sup>356</sup>

In 1979, NMFS estimated that the worldwide population of humpback whales to be about 5,000, of which about 1,000 were in the North Pacific. Some 70 to 100 humpback whales resided in Southeast Alaska during the feeding season, approximately May through October. During the years 1967 through 1977, 20 to 25 utilized Glacier Bay.<sup>357</sup> In 1978 there were fewer humpback whales than normal in Glacier Bay, and that number fell further the following year. The decline in humpback whales in Glacier Bay corresponded with an increase in vessel traffic, and the NPS imposed some modest restrictions on vessels: all motorized vessels were asked to remain ¼ mile from any humpback whale, and cruise ships were asked to proceed through designated waters where whales aggregated at 10 knots or less.<sup>358</sup> The restrictions had no discernible effect on the number of humpback whales in Glacier Bay.

In accordance with the provisions of the ESA, the NPS in August 1979 requested a formal consultation with the NMFS. Among the NMFS’s recommendations was that the total vessel use in Glacier Bay be restricted to the 1976 level.<sup>359</sup> A 1977 NPS-sponsored study in Glacier Bay by Chuck Jurasz recorded an apparent aversion by humpback whales to two types of vessels: cruise ships and “adventure craft” (small, usually fast boats). The vessels were thought to disturb the critical feeding behavior of the whales.<sup>360</sup> Commercial fish-

ing vessels themselves, particularly trollers—which tended to be small and slow and travel in straight lines—were thought to have little impact on whale behavior.

In March 1980 the NPS published a proposed temporary rule to address the protection of humpback whales in Glacier Bay until more finely-tuned permanent regulations could be promulgated. The rule, which would take effect June 1, 1980, included provisions to:

- limit the number of entries of cruise ships and other vessels over 100 tons gross into Glacier Bay during “whale season” (June 1 to September 1);<sup>BBB</sup>
- establish designated whale waters (subject to boundary modification) in which all vessels would be required to travel on a straight course at a speed of less than 10 knots, subject to common-sense decisions;
- designate a mid-channel corridor between the entrance of Glacier Bay and the north end of Strawberry Island for all vessels over 16 feet long, except those actively sport or commercial fishing.<sup>361</sup>

As written by the NPS, the proposed rule would have had almost no effect on commercial fishermen. The NPS allowed a 4-week public comment period on its proposal. It received 142 timely comments. The majority recommended more restrictive regulations, including restrictions on small vessels (less than 100 tons gross). The NPS responded by issuing interim regulations that limited entry of small vessels during whale season to the approximate 1976 level.<sup>362</sup> Commercial fishing vessels were exempted because their usage of Glacier Bay had been declining since 1976.<sup>363</sup>

Six comments suggested that the commercial harvest of species eaten by humpback whales be eliminated. Humpback whales are filter feeders that can consume more than 800 pounds of food in a day.<sup>364</sup> In Glacier Bay their diet ranges from krill and shrimp to small schooling fish, including herring.<sup>365</sup> The NPS

<sup>BBB</sup> During the fall, humpback whales migrate from southeast Alaska mostly to the Hawaiian Islands. Although calves are born during the winter, the whales do not feed until they return to southeast Alaska in the spring.



implemented this suggestion as an interim regulation: no commercial or charter fishing operation would be permitted to actively fish for capelin (*Mallotus*), sandlance (*Ammodytes*), krill (*Euphausiacea*), and, most economically important, shrimp (*Pandalus*). The NPS acknowledged it really didn't understand the relationship between food availability and humpback whales in Glacier Bay; it had funded studies to investigate the subject, but decided that "prudence dictates a conservative approach" to the issue.<sup>366</sup>

The NPS's experience with the regulations at Glacier Bay during the 1980 whale season indicated a pair of perceived shortcomings related to commercial fishing. The first involved Pacific herring (*Clupea spp.*), a primary food source for humpback whales. Though they did not frequent Glacier Bay in large numbers, they were known to occur. Prudence dictated that the NPS add Pacific herring to the list of prohibited species. The second issue was bottom trawling. Two bottom trawlers had operated recently in Glacier Bay (If it was in 1979, they may have targeted shrimp; if it was in 1980, they may have targeted bottomfish, such as flounder.). Bottom trawling of any sort is highly damaging to the ocean bottom, and could disrupt habitat important to shrimp and other organisms. Also, depending on the mesh size used, significant numbers of shrimp could be incidentally taken while targeting other species. Again, prudence dictated that bottom trawling be prohibited in Glacier Bay.<sup>367</sup>

The final (temporary) rule, as well as the proposals regarding herring and bottom trawling, were published in the last days of 1980.<sup>368</sup> They would be subject to ongoing review, and a formal review with the goal of making them permanent in 1983.

The NPS had not been entirely forthright in one aspect of its rulemaking. Regarding shrimp, one could make a decent argument that the elimination of trawling for swarming shrimp such as pinks might make a difference to humpback whales. Of concern was the possibility that a trawl fishery for shrimp would develop in Glacier Bay, where the Fish & Wildlife Service had found commercial quantities of shrimp in 1952. Unfortunately, pot shrimpers were lumped in with the trawlers. There were sporadic efforts to pot fish for shrimp in Glacier Bay, but they targeted spot shrimp, that were few in number and tended to be solitary rather than swarming. In no

remotely significant way did this pot fishery have an impact on the diet of humpback whales in Glacier Bay. After the rule had gone into effect, resource management specialist Gary Vequist candidly acknowledged that closing Glacier Bay to pot shrimping was simply something the NPS had wanted to do, and this rulemaking presented a good opportunity to do so.<sup>369</sup> As an officer of Friends of Glacier Bay, former Glacier Bay superintendent Bob Howe later took the Service to task over the same issue. Howe wrote:

Whether or not commercial fishing is considered an appropriate Park activity, whale regulations should not be used as a vehicle for limiting it unless whales benefit from the limits. Shooting square with fishermen on this matter will earn the NPS good will that is sorely needed in addressing much thornier management conflicts--such as the issue of wilderness waters.<sup>370</sup>

Except for this unfortunate episode, the NPS, in its own way, did shoot pretty squarely with fishermen. The ban on pot shrimping, however, can be viewed as a subjective decision by the NPS that was perhaps the first manifestation of the development of a policy to rid Glacier Bay of commercial fishing.

On at least one occasion, a fisherman in Glacier Bay had a more direct effect on the well-being of a humpback whale than by affecting its diet. Sometime in the middle or late 1960s, George and Jessie Dalton were traveling up bay in their small, outboard-powered cabin cruiser to troll for king salmon. In the Beardslee Islands the vessel struck and ran over a humpback whale. The Daltons were thrown forward off their feet but were unhurt, and reported that the whale swam away.<sup>371</sup> Outboard motors are designed to tilt up if they strike anything, and theirs likely did so. It is unknown whether or not the whale was cut by the propeller.

On another occasion (August 2005) a dead juvenile female killer whale (*Orcinus orca*) was found floating in Glacier Bay near Young Island. The whale was towed ashore and examined. Two types of fishing gear were found dangling from the whale's mouth. One was sport fishing gear of the sort used to troll for salmon.

This gear included a line, small lead weight and a hooked lure called a “hootchie.” The other gear was longline snap-on gear that included a circle hook, gangion and snap. This type of gear is used to catch halibut by commercial as well as personal use fishermen.<sup>CCC 372</sup> A necropsy led by a veterinarian from the Alaska SeaLife Center collected numerous biological samples, including the stomach. Later analysis revealed that the whale’s stomach contained an additional circle hook with gangion and snap, and a salmon hook of the sort used by sport and commercial trollers. The cause of death was determined to be the cumulative effects of septicemia (blood poisoning) that was probably brought on by an ulcerated esophagus and lacerated tongue due to the presence of a circle hook and a sport salmon trolling rig in the mouth and throat, and “bronchopneumonia and necrotising hepatitis.”<sup>373</sup> The presence of four separate items of fishing gear in this individual whale begs the question of how commonly killer whales take fish caught by fishermen, and how many might be burdened with fishing gear.

There is also the issue of whales becoming entangled in commercial fishing gear. Although actual entanglement has not been documented in commercial fishing gear in Glacier Bay, a humpback whale became entangled in sport crab gear in Bartlett Cove in May 2006, but managed to shed the gear by itself after a couple of days.<sup>374</sup> Approximately 71 percent of humpback whales surveyed in northern Southeast Alaska during the years 2003 and 2004 had “unambiguous” scars from entanglement, and 8 percent of the whales observed in Glacier Bay and Icy Strait during the survey acquired new entanglement scars between 2003 and 2004, although the sample size was small. Humpback whales range thousands of miles and the scars persist over many years, so there is no conclusive evidence regarding where or when these entanglements occurred.<sup>375</sup>

### Sea Lions

Steller sea lions (*Eumetopias jubatus*) were first recorded in Glacier Bay in the early 1970s, near the end of a population decline that caused them to be listed under the Endangered Species Act in 1990. Sea lions from both the

threatened eastern stock, and the endangered western stock (defined as inhabiting the area west of Cape Suckling, on the Gulf of Alaska near Cordova) use Glacier Bay waters.<sup>DDD 376</sup> In the mid-1990s the sea lion population in Glacier Bay began to increase dramatically. In recent years, several hundred sea lions have been counted on their haulout on South Marble Island at one time.<sup>377</sup>

These powerful, quick, and very agile marine carnivores, which can weigh more than a ton, feed on a wide variety of fish. In Southeast Alaska, they commonly follow commercial salmon trollers and attack hooked fish. Fish—particularly king salmon—are usually hard enough to get on a hook in the first place, and having sea lions taking them is very frustrating. Trollers sometimes employ “seal bombs,” large weighted firecrackers that explode underwater, to scare sea lions away. Unfortunately, in attempting to snatch a fish from a troller, sometimes a sea lion gets more than it bargained for: it is not uncommon to observe a sea lion with sport and/or commercial trolling gear hanging from its mouth. Sea lions encumbered by fishing gear have been sighted in Glacier Bay, though the unwanted accoutrements may have been acquired elsewhere. Sea lions that have ingested fishing gear often become emaciated and may die.<sup>378</sup>

Sea lions also are also adept at removing halibut from longline gear, particularly as the gear is being hauled. It seems that the sea lions do not attempt to eat the halibut until it has been pulled free of the hook. Such depredations have been observed in Glacier Bay.<sup>379</sup>

### Memorandum of Understanding with ADF&G

In 1971 Superintendent Bob Howe reported that relations between the NPS and ADF&G “remained cordial,” and that exchange of patrol data continued on an informal basis.<sup>380</sup> Greg Streveler, Howe’s biologist, noted that same year that the NPS had no data on commercial fisheries catch sizes in the monument.<sup>381</sup>

In about 1981, managers at Glacier Bay prepared a report titled “Expansion of Com-

<sup>CCC</sup> Silver salmon and Pacific halibut are primary prey species of the resident killer whale population in Icy Strait and Glacier Bay.

<sup>DDD</sup> A California sea lion (*Zalophus californianus*), which is smaller than a Steller sea lion, has recently been sighted in Glacier Bay.

mercial Fishing in Park Marine Waters.” The report noted the NPS’s paucity of data on commercial fishing, and cited the need for a closer relationship between appropriate state and federal agencies “to develop a cooperative approach to review and analyze the commercial fishing operations from various points of view.”<sup>382</sup> It may have had little to do with the concerns expressed at Glacier Bay, but in late 1982 the NPS and ADF&G signed a memorandum of understanding over the fish and wildlife resources in the national park system in Alaska. Shared concern for the resources on lands and waters designated as part of the national park system under ANILCA fostered the cooperation. In the formal agreement both agencies acknowledged their conflicting mandates: ADF&G was charged with managing fish and wildlife by the “sustained-yield principle,” while the NPS was charged with the “conservation of healthy populations” of fish and wildlife. As part of the agreement the NPS acknowledged ADF&G as the agency with the primary responsibility for managing fish and wildlife resources in Alaska. ADF&G, in turn, acknowledged the NPS’s responsibility to “conserve fish and wildlife and their habitat and regulate human use on Service lands in Alaska, in accordance with the National Park Service Organic Act, ANILCA, and other applicable laws.” The agencies agreed to coordinate planning for management of fish and wildlife resources, and to consult with each other when developing policy, legislation, and regulations. Additionally, and most important for Glacier Bay N.P., the agencies agreed “To provide each other upon request fish and wildlife data, information, and recommendations for consideration in the formulation of policies, plans, and management programs regarding fish and wildlife resources on Service lands.”<sup>383</sup> The NPS by this time was very interested in knowing how much fish was being removed from the Park by commercial fishing interests. Unfortunately, guidelines were never established for the dissemination of information, and little information was shared. Particularly in Glacier Bay proper, this was compounded by the fact that some ADF&G statistical reporting areas did not correspond to the boundaries of Glacier Bay. A state statute that protects the confidentiality of what individual fishermen catch was also

a factor.<sup>384</sup> Regarding its policy for statistical reporting areas in Glacier Bay, ADF&G wrote in 1984 that “Natural resource management and human use of fish and wildlife cannot be effectively oriented along political boundaries,” and that the department did not intend to re-divide management units to correspond with subdivisions established by the NPS in Glacier Bay N.P.<sup>385</sup>

### **Superintendent Mike Tollefson**

Mike Tollefson wasn’t the first choice of the NPS to replace John Chapman. Chuck Janda, formerly chief ranger at Glacier Bay, was offered the superintendent job, apparently due in part to an endorsement by the commercial fishing community. Janda declined.<sup>386</sup>

Of all Glacier Bay’s superintendents, Tollefson had the most background in and understanding of commercial fishing. He was of a Seattle fishing family. Both his father and mother had worked in canneries in Alaska, and his mother later worked for a commercial fishing supply company. His background also had a conservation component: backpacking trips were a regular family event. And his experience with the NPS at Lake Clark, Mount McKinley, and Katmai national parks gave him an understanding of how the NPS fit into Alaska’s social, political, and economic landscape.

When Tollefson arrived at Glacier Bay in June of 1983, there were three pressing administrative issues, each with a commercial fishing component: an ANILCA-mandated general management plan (GMP), on which work had begun in 1981, needed to be completed; the 1980 whale regulations, which required a formal review and update; and the Service’s involvement in preparing regulations to terminate commercial fishing in waters designated as wilderness under ANILCA.<sup>EEE</sup>

ANILCA had designated four areas in Glacier Bay proper—a total of 41,367 acres—as wilderness, among them the Beardslee Islands, which were especially important to the developing local Dungeness crab industry.<sup>FFF</sup> But it was not until May 1982—fully 18 months after ANILCA became law—that DOI Associate Solicitor J. Roy Spradley issued an opinion that Congress, in crafting ANILCA, clearly intended that commercial fishing be prohibited in Glacier Bay waters designated as wilderness.<sup>387</sup> A countering State of Alaska opinion

<sup>EEE</sup> A general management plan establishes broad policy direction for the management and administration of a park.

<sup>FFF</sup> The four areas designated were: Adams Inlet, Beardslee Islands, Rendu Inlet, and Scidmore Bay/Hugh Miller Inlet.

issued by Assistant Attorney General Robert Price did not cite ANILCA, but claimed Glacier Bay's wilderness waters were open to commercial fishing because the NPS had no jurisdiction over the "submerged lands" and the supervening water column in Glacier Bay. (The question of whether the state or federal government held title to submerged lands or jurisdiction over Glacier Bay's waters would recur, and would not be answered definitively for nearly a quarter century. Price recommended that Congress be asked to remove the ANILCA wilderness designations in Glacier Bay. Absent action by Congress, he suggested a suit be filed in the U.S. Supreme Court to establish state ownership of the submerged lands.<sup>388</sup>

By the time Price had written his opinion, the NPS regulations to close the areas to commercial fishing had been prepared in Washington, DC. They were expected to be released in December 1982.

The impending closure of the wilderness waters of Glacier Bay caused alarm in Southeast Alaska, and people looked mostly to the state for help. But they also had a powerful ally in Washington, DC: James Watt, President Ronald Reagan's pro-development Secretary of the Interior, had established a "good neighbor" policy in Alaska. By his directive, the implementation of ANILCA was "not to create an oppressive federal presence." Watt assured the people of Alaska that they could "continue their traditional activities with a minimum of interference," that in the implementation of ANILCA the state's position on issues would be considered.<sup>389</sup> Good neighbor policy notwithstanding, however, James Watt had no legal discretion to allow commercial fishing in the wilderness waters of Glacier Bay. He could bureaucratically slow down the regulatory process, but he could not ultimately thwart it.

In the spring of 1983, the State of Alaska re-weighed its options. It could push for a legislative solution, such as amending the Wilderness Act or ANILCA to allow commercial fishing in Glacier Bay's wilderness waters, but the prospects for success seemed slim. The state was correct: legislation to perpetuate commercial fishing in the wilderness waters of Glacier Bay introduced by Representative Don Young in February 1983 never received even a committee hearing.<sup>390</sup> Another option was for the state to take Robert Price's advice and file a claim to Glacier Bay's submerged lands in the U.S. Supreme Court. Such a suit would be both

time-consuming and costly. More important, despite the state's confident public stance, there was substantial doubt that it could succeed. The state chose a third option: to continue negotiations with the DOI and explore avenues for discretionary relief that would allow previously established fishermen to continue fishing in wilderness waters (through "grandfathering"). At the same time, the state would pressure the federal government to comply with all procedural and substantive laws in the rulemaking to slow down the process.<sup>391</sup>

In late July 1983, Norman Gorsuch, Alaska's attorney general, convened a meeting in Juneau to begin discussing the Glacier Bay issue with fishing groups, community representatives, environmental groups and state and federal agencies. Similar meetings would be held over the next 18 months.<sup>392</sup>

In late August, Superintendent Tollefson met with representatives of the State of Alaska and commercial fishing and environmental groups to discuss commercial fishing in Glacier Bay, particularly in waters designated as wilderness by ANILCA. Alaska Governor Bill Sheffield sent a message to the group stating that he felt pre-ANILCA use should continue. The general discussion at the meeting focused on the possibilities of grandfathering existing fishermen and changing wilderness boundaries. Grandfathering was thought not to be workable, but a work group was established to explore wilderness boundary changes. A second work group was formed to focus on legal issues and alternatives.<sup>393</sup>

In ANILCA, Congress had made the Beardslee Island area wilderness although NPS had not included the area in its formal wilderness recommendation in 1972.<sup>394</sup> Unofficially, at least, the NPS was not adverse to the prospect of deleting the Beardslees from wilderness in exchange for designating wilderness elsewhere in Glacier Bay. Muir Inlet was preferred. To do so would require amending ANILCA in what many, particularly national environmental groups, considered an unfavorable political climate. There was fear that amending ANILCA to rectify the Glacier Bay situation might "open Pandora's box" for those who sought to gut the legislation in various other ways.<sup>395</sup>

The Southeast Alaska Conservation Council (SEACC) and Friends of Glacier Bay (FOGB) were particularly active in the Glacier Bay work group. Representatives of Excursion Inlet Packing Co., Hoonah Cold Storage, and Pelican Cold Storage were involved as well.<sup>396</sup>

Formed in 1971, SEACC was Southeast Alaska's first regional conservation organization and counted a number of commercial fishermen among its membership. Although the organization's primary interest was forest issues, in 1983 SEACC began to work with other interest groups to craft a regionally acceptable compromise to the Glacier Bay commercial fishing issue. SEACC's involvement was invited by fishermen in large part because its support of a solution the work group might arrive at was seen as necessary to obtaining the support of national environmental groups. Bart Koehler, who represented SEACC at a number of meetings from about 1995 through 1998, looked upon small boat commercial fishermen as "Alaska's version of the small family farmer."<sup>397</sup>

FOGB was formed in Gustavus in 1981 to promote the management of Glacier Bay N.P. "in conformity with its original mandate." Former Glacier Bay superintendent Bob Howe was among the founding members.<sup>398</sup> FOGB, with considerable dissension in its ranks, supported commercial fishing in Glacier Bay, providing there were measures to "reduce biological and aesthetic impacts to acceptable levels." No definition of "acceptable" was provided.<sup>399</sup>

The unofficial work group met at Bartlett Cove in the fall of 1983. Before the year was out, the group had arrived at the general consensus position that the Beardslee Island area (and Dundas Bay) should be deleted from wilderness in exchange for the designation of Muir Inlet as wilderness. The inlet had virtually no established commercial fishing use except for Tanner crab (which occurred during the winter) and would be an excellent location to study marine succession. As an act of good faith, the NPS was prepared to hold off promulgating a rule that would close wilderness waters to commercial fishing.

In January 1984, Jim Stratton, executive director of SEACC, presented the work group's "idea" to the national environmental groups in Washington, DC. He dryly noted that "by no means was it heartily endorsed." The idea had enough support, however, that the Sierra Club Legal Defense Fund actually drafted legislation based around it, but only to structure further discussions.<sup>GGG 400</sup>

All was for naught. In reaching their consensus position, the groups had failed to consider the reaction of the cruise ship industry to the possibility that it would be denied access

to Muir Inlet. In late 1984, the powerful industry very quietly used its political muscle to veto the entire proposal. Roughly the same exchange, however, would quickly rise again as an official NPS proposal.

The NPS may have learned some lessons in its failure to promulgate regulations to close Glacier Bay's wilderness waters to commercial fishing: the commercial fishing issue engendered a lot of controversy, the opponents were formidable, and pushing the issue might damage the Park Service's endeavors elsewhere. Also, there were a number of time-consuming administrative and planning projects that needed completion at Glacier Bay and only a limited staff to work on them. Mike Tollefson knew, however, that it was just a matter of time before the commercial fishing issue "got huge."<sup>401</sup>

Shortly after President Ronald Reagan entered office, his administration began a government-wide effort to simplify Federal regulations and ease the burden of regulations on the public. A decision was made to comprehensively review and revise the NPS general regulations, which had been last revised in 1966. The goal was to eliminate out-of-date requirements and apply new rules that reflected current public use and management needs. In March 1982, the NPS published a proposed rule in the *Federal Register* that addressed commercial fishing, but only in fresh water. The proposed rule prohibited "Commercial fishing in fresh waters, except where specifically authorized by Federal Law."<sup>402</sup> In the public comment process, one individual pointed out the inconsistency of prohibiting commercial fishing in only fresh water. The NPS agreed with the commenter, and in a 1983 *Federal Register* preamble to the regulation explained that "all commercial fishing is prohibited unless authorized by Federal statutory law or regulation."<sup>403</sup> (emphasis added) As written in the same *Federal Register* entry and in the Code of Federal Regulations (C.F.R.), however, the regulation, entitled "Fishing," prohibited "Commercial fishing, except where specifically authorized by Federal statutory law."<sup>404</sup>

The NPS has the authority to make regulations, but statutes are products of Congressional action. Simply put, the NPS interpreted its law and policy in 1983 to prohibit commercial fishing unless specifically authorized

<sup>GGG</sup> The Sierra Club Legal Defense Fund changed its name to Earthjustice in 1997.

by Congress. It need not have been that way, because the regulation could have been modified by the NPS, subject, of course, to statutory law. Had it wanted to do so, the NPS could have promulgated a rule that prohibited commercial fishing except where specifically authorized by, say, park superintendents. Involving Congress, as the NPS did in the 1983 regulation, was simply raising the barrier.

The question of the applicability of the regulation to Glacier Bay was raised by NPS staff at Glacier Bay, some of whom could on occasion see commercial fishermen at work through their office windows. The legal opinion of Associate Solicitor J. Roy Spradley, a Reagan appointee in the Washington DC Solicitor's Office, in the summer of 1983 likely did not please the more preservation-minded among them.

It was Spradley's opinion that the non-wilderness waters of Glacier Bay were exempted from the rulemaking because in promulgating the regulation it was the intent of the NPS to "avoid prohibiting commercial fishing in areas where such activity has constituted a major use," (such as in Everglades National Park). Although the 1980 NPS Glacier Bay temporary regulations designed to protect humpback whales did not expressly authorize commercial fishing, they did indicate that the activity was sanctioned by the NPS. Under Spradley's "favored analysis," Glacier Bay N.P. was therefore exempted from the 1983 rulemaking. Spradley furthermore advised that a Government effort to prohibit commercial fishing in the non-wilderness waters of Glacier Bay N.P. would be "extremely controversial" and could generate litigation. He advised that commercial fishing in non-wilderness waters should be allowed to continue pending a review of options for "managing" commercial fishing in wilderness waters.<sup>405</sup> John Quinley, later spokesman for the NPS Alaska Region, said in retrospect that closing Glacier Bay to commercial fishing was at that time "not an issue that we were ready to deal with," and "a fight we didn't want to fight."<sup>406</sup>

This tolerance of commercial fishing was reflected in the general management plan for Glacier Bay N.P. completed in 1984 under Mike Tollefson.<sup>407</sup> The GMP recognized the "considerable economic importance" of the commercial fisheries in Glacier Bay NP, and stated that

Traditional commercial fishing practices will be allowed through-

out nonwilderness park and preserve waters and will be subject to regulations by the National Park Service (NPS) and Alaska Department of Fish and Game (ADF&G). Commercial fishing in wilderness waters will be prohibited in accordance with ANILCA and the Wilderness Act.<sup>408</sup>

According to the NPS, "traditional commercial fishing practices" in Glacier Bay proper the NPS included trolling, long-lining, and pot fishing for crab.<sup>409</sup> The GMP also recommended that the Beardslee Islands and Hugh Miller Inlet be deleted from wilderness designation, while Muir Inlet and Wachusett Inlet be granted such designation.<sup>410</sup> Such an exchange would have benefited particularly Beardslee Island crab fishermen. Because of the ongoing effort to change the status of the Beardslee Islands, the ban on commercial fishing in Glacier Bay's wilderness waters was not enforced for the time being.

Commercial fish harvest statistics are kept by the Alaska Department of Fish & Game (ADF&G). Since the 1982 memorandum of understanding, the NPS had been working with ADF&G to establish Glacier Bay proper as a separate statistical unit for the reporting of commercial fish harvest data. The information would be of value to biologists, but also to those who might have designs to end commercial fishing in the park. ADF&G made no such changes, however, so the NPS threatened to establish a registration and catch reporting system for all commercial fishermen who used Glacier Bay proper.<sup>411</sup> Such a system would have aroused probably more controversy than the NPS was willing to stomach, and the agency never followed through with its threat.

In early 1984, the State of Alaska presented a number of recommendations for how Glacier Bay should be managed to "ensure continuance of traditional uses, while concurrently providing for sound conservation of the various natural resources." The state urged the NPS to accommodate traditional uses, including commercial fishing to the "greatest extent possible," and claimed that diminishing or eliminating commercial fishing from Glacier Bay's wilderness waters would "create a severe impact on the fishing community and the state's ability to manage fisheries stocks." The

state requested that the NPS cooperate with it in the collection, interpretation and dissemination of fisheries information, and it further suggested that NPS and the state cooperate and share resources in research of mutual interest. In what seemed to be an exercise in wishful thinking, the state also requested that the NPS attempt to explain to the public through brochures and other means that “consumptive uses [of Glacier Bay’s resources] are compatible with ecosystem management and will be allowed.” Another seemingly wishful recommendation was that the NPS construct a harbor and public dock at Bartlett Cove to provide protected moorage for area residents, visitors, tour operators and fishermen.<sup>412</sup>

The formal review of the temporary 1980 whale regulations resulted in few changes, and permanent whale regulations were promulgated before the beginning of the 1985 summer season. Provided that commercial fishing vessel use levels remained at or below their 1976 use level, commercial fishermen were exempted from the permit system that limited the number of vessels that were allowed to enter Glacier Bay during whale season.<sup>413</sup> Some later argued that this provision had also implicitly exempted commercial fishing in Glacier Bay proper’s non-wilderness waters from the NPS’s 1983 general prohibition on commercial fishing in national parks.<sup>414</sup>

# Fish Report No. 5:

King Salmon—Halibut—Dungeness Crab—Tanner and King Crab—New Owners at Hoonah Cold Storage and Pelican Cold Storage—Point Adolphus Seafoods—Processing Seafood at Gustavus—Sea Otters Recolonize—Tenders—Leslie Hillman

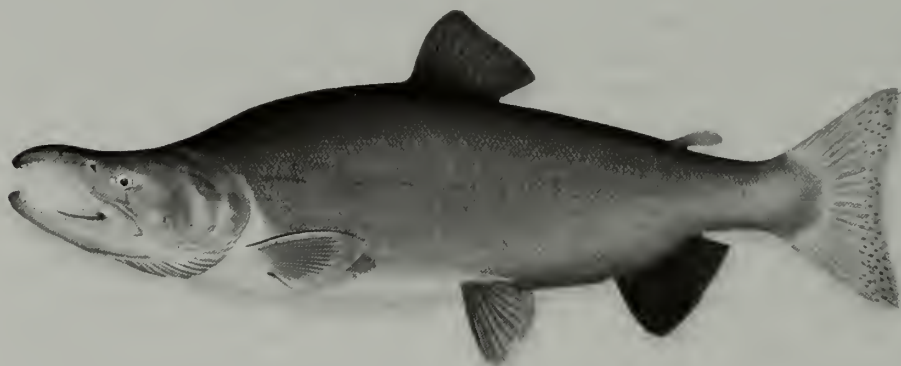






Figure 25: Skiff fisherman Paul Barnes landing halibut in the mouth of Glacier Bay. (courtesy James Mackovjak)

The commercial fishing industry in Glacier Bay grew rapidly while Mike Tollefson was superintendent. The growth was mostly due to three factors: Gustavus was growing; halibut, salmon, and Dungeness and Tanner crab were becoming more valuable; and the NPS—reluctant to enforce unpopular regulations—had what some in the Service later termed an “open door” policy toward commercial fishermen.<sup>415</sup>

In Southeast Alaska as a whole, commercial fishing in 1984 accounted for ten percent of the total and forty percent of the private basic income.<sup>HHH 416</sup>

On a somber note, the worldwide catch of marine fish peaked in 1989, at 86 million metric tons.<sup>417</sup> The principal cause of the decline that followed was overfishing. Though overfishing was not an issue in Glacier Bay, the decline in the world’s fisheries spurred public interest and support for the establishment of no-take zones. Glacier Bay National Park would become a prime candidate.

### King Salmon

The salmon trolling effort in Glacier Bay also increased during the 1980s, but it was concentrated in the fall, after the visitors and whales had mostly left. It had become widely known that king salmon were often relatively plentiful in Glacier Bay in early October. There weren’t a huge number of fish to be caught, but with all other Alaska salmon fisheries closed, there was little competition in the fresh fish market, so the price paid to fishermen was usually fairly high.

A few dozen vessels from throughout the region came to participate in the fishery (at least for the first few days of the season), where they spread themselves out from Bartlett Cove to Russell Island to Muir Inlet. The fishing was usually best when the season first opened (October 1), and good fishing lasted a couple of weeks at most. Then the fish seemed to move on. During this period, a total of perhaps 1,000 to 2,000 king salmon were caught. A catch of even five fish per day for an individual boat was usually considered worthwhile.

Overall though, the October troll effort wasn’t generally something that would make a fisherman’s season. It was more a financial shot in the arm before winter set in. There was as well a mental health component to the fishery: it provided an opportunity for fishermen to get out of the house during the off season. It must be noted that efforts later in the season sometimes yielded large catches.

### Halibut

The halibut fishery in Glacier Bay began to grow rapidly around 1980. Statewide, the number of vessels fishing halibut had begun to increase rapidly beginning in the mid-1970s

The halibut fishery in Alaska was during those years managed on an area quota system, with the length of the season based on how long International Pacific Halibut Commission (IPHC) fishery managers estimate it would take the halibut fleet to catch the quota (see Figure 25).<sup>III</sup> For a number of years prior

<sup>HHH</sup> Private basic income is that generated in private industries that produce goods or services for export, such as commercial fishing, the manufacture of forest products, and mining.

<sup>III</sup> Glacier Bay is in Area 2C, which comprises most of southeast Alaska.

to 1976, the season began in early May and ended in September. As the fleet grew, the length of the season declined proportionately. Most who fished halibut participated in other fisheries and fished halibut to supplement their income.<sup>418</sup> Others were “hobbyists” who fished part-time from sport boats. Professional halibut fishermen—“halibut heads”—were a dying breed.

By 1980 the halibut fleet was overcapitalized and inefficient. Short, intense “halibut derbies,” sometimes only 24 hours long, made for hit-or-miss fishing and led to production bottlenecks at processing plants that affected the quality and price of halibut. They were also dangerous: regulators would not cancel a season because of bad weather, and the competitive nature of the fishery led some physically exhausted crews to continue fishing.

On the first day of the 3-day 1984 halibut season (May 22-24) an NPS aerial survey of Glacier Bay proper counted fully 70 halibut vessels.<sup>419</sup> Many were not in Glacier Bay because it was their preferred place to fish, but because the halibut grounds elsewhere were crowded. This crowding forced much of the effort into marginal areas.

The possibility that there might be a high density of halibut vessels in Glacier Bay during whale season caused concern about adverse impacts on humpback whales. Following the 1984 season, Superintendent Tollefson requested that the National Marine Fisheries Service (NMFS) work with the International Pacific Halibut Commission (IPHC) to close Glacier Bay proper to halibut fishing during whale season. The NMFS and IPHC expressed sympathy with the NPS, but explained that halibut seasons were normally set to accommodate fishermen and processors. They declined to adjust the season to accommodate the NPS’s concerns. The situation overall was worsening. In response to this problem, the federal government’s National Marine Fisheries Service (NMFS) designed an individual fisherman’s quota (IFQ) program that, when implemented in 1995, substantially improved the fishery in almost every respect. As it worked out, the number of halibut vessels in Glacier Bay during whale season subsequently decreased to a level that allowed the NPS to determine that limiting halibut vessels was not necessary.<sup>420</sup>

<sup>419</sup> A May halibut season would tend to attract a high number of fishermen. The weather is usually good, and other seasons, such as trolling, crabbing, seining and gillnetting, have not yet started.

## Dungeness Crab

Despite the fact that the Beardslee Island area had in 1980 been designated as wilderness and seemed likely to be closed to commercial fishing, the Dungeness crab fishing effort there was steadily increasing during the 1980s and becoming more sophisticated. In 1983, Charlie Clements upgraded from the 38-foot *Rust Bucket* to the *Bogart*, a 22-foot heavy-duty outboard-powered aluminum skiff. The same year Tom Traibush got a bigger engine and a hydraulic puller for the *Fat Man*, and increased the number of pots he was running to 90. In 1984 Otto and Christina Florschutz purchased Duke Rothwell’s Dungeness crab fishing operation, including the venerable *Adeline*. As part of the sale agreement, Rothwell was contracted to fish with the Florschutzes for a several months to teach them some of what he knew of the Glacier Bay area. Like Traibush and Clements, the Florschutzes would join the top tier of Dungeness crab fishermen in Southeast Alaska.

Traibush worked hard and fishing was good. In 1986, fishing from the *Fat Man*—an open skiff—and running a full string of 300 pots, he caught more than 40,000 pounds of Dungeness crab. The following spring, he purchased the *Nellie Brown*, a 34-foot diesel-powered fiberglass-hulled lobster boat that the Forest Service had surplused. As well as Dungeness crab, Traibush fished halibut. During the first halibut opening in 1987, he caught a disappointing 1,600 pounds. For the second opening, he set a lot of gear in the right place and caught 13,000 pounds. At one point, Traibush had so much halibut aboard the *Nellie Brown* that it began to take on water. The ex-vessel price for halibut that opening was about \$1.25 per pound, which meant Traibush had pretty much paid for his boat. And the Dungeness crab season had not yet begun. Traibush landed 73,000 pounds of Dungeness crab that year. His entire crab catch was from Glacier Bay, mostly from the Beardslees.<sup>421</sup>

Traibush leased the *Fat Man* to his deckhand, who also fished Dungeness crab. In late July 1988, the *Fat Man* sank near Kidney Island Reef in the Beardslee Islands. The boat had been overloaded with crab pots, and, because a lot of the weight was in the bow, it was also poorly trimmed and pushing a big bow wave. This dangerous situation became life-threatening when the outboard

motor suddenly quit, causing the boat's bow to plunge into the wave. Water poured into the open boat, and it quickly sank. Luckily, the vessel was close to shore, and both aboard escaped unharmed. The *Fat Man* rests today where it sank.

In 1989 Charlie Clements upgraded to the *Heron*, a gasoline-powered 26-foot fiberglass-hulled lobster boat. He sold the *Bogart* to Tom Traibush, who planned to use the vessel to tender his own halibut.

Park rangers counted 206 Dungeness crab pots that were being fished by four local fishermen in the Beardslee Islands in 1984. An undetermined number of pots were located in other parts of Glacier Bay. In 1986 rangers counted 493 pots in the Beardslee Islands, and an additional 239 in other parts of Glacier Bay. By 1987 the number of Dungeness crab pots in the Beardslee Islands had increased to 867, with an additional 358 in other locations in lower Glacier Bay.<sup>KKK</sup> A total of eight fishermen fished that year in lower Glacier Bay, three of whom were from out-of-state.<sup>422</sup> The effort would continue to increase.

#### Tanner and King Crab

Alaska's Tanner crab fishery grew to meet strong Japanese demand for frozen crab sections. Unfortunately, overfishing during the 1980s from Prince William Sound westward caused Tanner crab stocks to fail.<sup>L11</sup> The Yakutat area Tanner crab fishery subsequently failed also.<sup>423</sup> A consequence of this unfortunate situation was that Southeast Alaska's Tanner crab became more valuable.

Tanner crab fishing in Southeast Alaska is confined to the winter, so in Glacier Bay it did not conflict with visitors or whales. Five vessels fished Tanner crab in Glacier Bay in 1986.<sup>424</sup> By 1987, some small vessels—mostly from Gustavus—were fishing Tanner crab in Glacier Bay by using “ring nets.” “Hoopers,” as they called themselves, were not subject to limited entry restrictions, but were limited to 20 ring nets. A ring net is a fairly heavy steel circular frame around which nylon mesh is stretched. A bridle of three lines fastened to the frame at equidistant intervals leads to a buoyline and marker buoy. Bait, usually salmon or codfish, is secured in the middle of the net, which is set on the ocean bottom. Periodically the gear is quickly brought to the surface with

a hydraulic puller. Water pressure pins crab to the mesh during the retrieval. Ring net fishing is not practical in waters deeper than about 40 fathoms. Because the currents are not strong and the waters somewhat protected, the Beardslee Islands were very popular among ring net fishermen. Though the Tanner crab ring net fishery wasn't a “big money” fishery, it was important financially for a handful of fishermen in Gustavus during a traditionally very lean time of the year. Almost any vessel equipped with a hydraulic puller was suitable for fishing with ring nets.

Glacier Bay's king crab fishery remained small, with the species caught mostly incidental to the Tanner crab fishery. Average annual harvest in Glacier Bay proper during the years 1976 to 1995 was 4,900 pounds of red/blue king crab, and 1,100 pounds of golden king crab.<sup>425</sup> In 1984, the state's Commercial Fisheries Entry Commission capped the number of fishermen allowed to participate in Southeast Alaska's king crab fishery.

#### New Owners at Hoonah Cold Storage and Pelican Cold Storage

Thompson Fish Co.'s frozen fish were marketed by Bill Dignon, of Seattle. Mike Thompson died unexpectedly in 1984, and the operation was purchased by Dignon two years later. Dignon expanded the operation (including an approximate doubling of freezing capacity, to 70,000 pounds per day) and changed



Figure 26: Logo of Hoonah Cold Storage in Hoonah. (courtesy James Mackovjak)

its name to Hoonah Cold Storage (see Figure 26). The business focused on the production of troll-caught salmon for the European market,

<sup>KKK</sup> Tom Traibush later told the author that rangers failed to see many buoys.

<sup>L11</sup> Some Tanner crab areas have not yet reopened.



Figure 27: Founders of Point Adolphus Seafoods in Gustavus, James and Annie Mackovjak (courtesy Deb Woodruff)

but also processed halibut, Tanner crab and sablefish (“black cod”).<sup>426</sup> During the 1990s, Hoonah Cold Storage was the largest buyer of halibut and Tanner crab from Glacier Bay.<sup>427</sup>

Pelican Cold Storage, owned by the Clapp family and managed by Jim Ferguson, grew to become one of the principal fish processing establishments in Southeast Alaska. The plant was capable of freezing 200,000 pounds of fish per day. In 1982, after 13 years at the company’s helm, Ferguson retired.<sup>428</sup> In 1989, the Clapp family sold the company to Kaioh Suisan, a Japanese firm that had no experience in processing fish.

#### Point Adolphus Seafoods

By 1984 Icy Passage Fish was purchasing most of the Dungeness crab caught by locals in Glacier Bay. Another business, Point Adolphus Seafoods, was started that same year by a Gustavus resident, Jim Mackovjak (see Figure 27). Mackovjak had considerable experience fishing and working on tenders and in processing plants. His plan was to focus on processing halibut and salmon, and to not compete with Icy Passage Fish for crab. The business didn’t work out as planned, and shipping live Dungeness crab soon became the financial backbone of Point Adolphus Seafoods. The company also shipped live Tanner crab and fresh salmon and halibut. Crab shipments ranged up to about 1,000 pounds per day, while shipments of salmon and halibut were sometimes 5,000 pounds or more. A limiting factor was the availability

of air cargo space. Mackovjak figured that his small operation was capable of shipping about 2,000 pounds of fish per day continuously.

#### Processing Seafood at Gustavus

As a site for processing fish, Gustavus offers little to attract an operation of any size. Though the very high cost of electricity is a factor, the principal reason is the lack of a boat harbor. What Gustavus does have, however, is an airport with—at least in the summer—scheduled Alaska Airlines jet service. With a nearby supply of high-quality seafood, Gustavus is a very good location from which to ship modest quantities of fish by air, particularly to West Coast markets.

Shipping fresh or live seafood can be a financially perilous business (see Figure 28). Alaska Airlines, Southeast Alaska’s major carrier, has a lot of experience transporting fish, not all of it good. Leaking crab boxes that originated at Gustavus once damaged the floor of a plane’s cargo hold so badly that it had to be replaced. (Crabs are shipped dry, but there is always drainage.) Seafood freight rates are comparatively low, but seafood is also the lowest priority cargo. It is the last to be booked and the first to be bumped. While Alaska Airlines has good connections to West Coast cities, its hub, Seattle, can be a “black hole” for a perishable product. Product eventually finds its way out of the Seattle air freight terminal, but it has been known to take days, which literally destroys fresh seafood. Maintain-

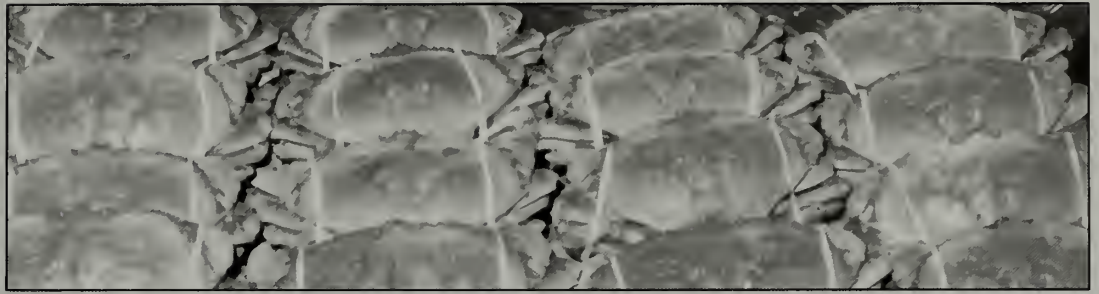


Figure 28: Whole-cooked Dungeness crab packed for shipment by air to market in the Lower-48. (courtesy James Mackovjak)

ing good relations and communications with Alaska Airlines, therefore, has been critical to success. Gustavus some years had the advantage of being the turnaround location for Alaska Airlines northbound flights. This meant that Gustavus shippers received priority in putting cargo on the southbound plane. This was particularly important in the early years when the Boeing 737 planes that Alaska Airlines flew into Gustavus were smaller and had less cargo capacity than the more modern versions now used. Unfortunately, Alaska Airlines' facilities at Gustavus do not include a cooler, and cargo usually sits un-refrigerated for hours before being loaded aboard a plane.

There was a lot of cooperation in Gustavus between fishermen and processors. In a normal port—one with a harbor—fishing vessels would tie to a processor's dock and unload their crab from a "tanked" hold (one into which saltwater is pumped continuously). The crab would be weighed, then placed in live tanks on the docks to await processing. Lacking a harbor, the fishermen in Gustavus improvised. While fishing, they kept their catch on deck in holding containers that ranged from perforated plastic garbage cans to crab pots with the doors wired shut. The crab were periodically doused with seawater. So long as they are kept moist and cool, Dungeness crab can live out of water for days. Fishermen "delivered" Dungeness crab by suspending their holding containers in the water from the dock at Gustavus or, in the fall, from the dock at Bartlett Cove. The processor was then notified, and the crab shipped as the market demanded. Crab were weighed as they were packed for shipment. In the mid-1980s, the Dungeness crab caught in Glacier Bay averaged about 2.4 pounds.

### Sea Otters Recolonize

The Cold War nuclear tests at Amchitka Island in Alaska's Aleutian Islands in 1969 had significant ramifications for the Dungeness

crab fishery of Glacier Bay and Icy Strait. Sea otters had been hunted almost to extinction in Southeast Alaska by the Russian-American Co. in the early 19<sup>th</sup> century, and the planning phase prior to the Amchitka tests provided an opportunity to rescue a number of at-risk sea otters and re-introduce them to Southeast Alaska. Prior to the explosions, ADF&G personnel captured the sea otters and transported them by airplane to Southeast Alaska. With the assistance of the NPS, some were released near Cape Spencer, on Glacier Bay N.M.'s outer coast. The population of sea otters did not grow rapidly for a number of years, but it then exploded. By 1987 large groups were sighted in Icy Strait. Crab are among the sea otter's favorite food: an individual sea otter can consume up to 14 Dungeness crab in a single day.<sup>MMM 429</sup> The voracious sea otters were in direct competition with Dungeness crab fishermen. Catches in Icy Strait therefore declined. Dungeness crab fishermen in Glacier Bay were alarmed in the mid-1990s when the first few sea otters were sighted on their fishing grounds. At that time the NPS was working hard to end commercial fishing, and some—though not with the NPS—speculated that the effort might be made moot if sea otters multiplied and decimated the Dungeness crab population first. In 2001, the 1,238 sea otters that were counted in Glacier Bay had not had competition from Dungeness crab fishermen for three years.<sup>430</sup> Perhaps it is still too early to tell if Glacier Bay's crab populations will be dramatically impacted by sea otters, but sport pots set in Bartlett Cove were doing well in 2006.

### Tenders

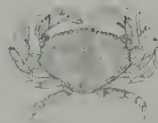
Tenders are vessels that purchase fish on the fishing grounds and transport them to processing facilities. Fish buying is very competitive, and processors utilize tenders to help secure a reliable supply of fish. Tenders also bring an element of efficiency to the industry by allowing

<sup>MMM</sup> Tanner crab are also preyed upon by sea otters.

fishermen more time on the grounds. In 1983, Glacier Bay Superintendent Mike Tollefson approved at least one tender in Glacier Bay during the halibut season as a means of reducing vessel traffic.<sup>431</sup> At least one and likely more tenders bought halibut in Glacier Bay the following year.<sup>432</sup> Tenders were regularly used to buy halibut in Glacier Bay until the IFQ program for halibut was established. Tenders are not usually used to purchase Dungeness crab, but during the summer of 1985 Icy Passage Fish experienced some financial problems—getting paid for crab that had already been shipped, and for awhile the company couldn't afford to buy crab from Tom Traibush and Charlie Clements. Fishing was good and they were accumulating a considerable quantity of crab. To reduce his inventory, Clements chartered floatplanes to fly loads of crab from the Beardslee Islands to Pelican Cold Storage, about 50 miles by air. Traibush and Clements approached Point Adolphus Seafoods about purchasing the crab. Jim Mackovjak quickly made arrangements with Seaboy Alaska Longline, a seafood company from Sitka, to send its tender, *Ranger*, to pick up the crab for transport to Juneau. Tollefson approved the tender on a one-time trial basis as a means to limit vessel travel and airplanes landing in the Beardslee Islands. The tender effort worked, but only marginally, and was not tried again.

#### **Leslie Hillman**

On April 5, 1985 Leslie Hillman, of Hoonah, perished when his 27-foot fiberglass-hulled cabin cruiser *Judge Two*, on which he was hand trolling for king salmon, struck Drake Island and sank during a snow squall that limited visibility. The vessel was later salvaged.<sup>433</sup>



## Documenting Glacier Bay's Fisheries: The Taylor report

As well as noting the need for cooperation in commercial fisheries matters among state and federal agencies, an internal 3-page report, "Expansion of Commercial Fishing in Park Marine Waters," written circa 1981, stated that so little was known about the marine ecosystem of Glacier Bay that a variety of research projects—including an evaluation of commercial fishing—was necessary to provide sound management of marine resources. The NPS's interest in commercial fisheries at that time was spurred in part by an ongoing State of Alaska program to develop a bottomfish (pollock, flounder, etc.) industry in Southeast Alaska.<sup>434</sup>

As commercial fishing in Glacier Bay increased, so too did backcountry use, particularly "sea" kayaking. Kayaking in Glacier Bay started to become popular in the mid-1970s, and continues to be a popular recreational use. Most Glacier Bay kayak trips in the early years were professionally guided, but the trend in more recent years has been toward independent touring in rented kayaks. A conflict arose when some who had come to Glacier Bay to experience a peaceful wilderness kayak trip were annoyed by the noise and commotion created by commercial fishing vessels. This was particularly true during the short, intense halibut openings, when numerous boats filled the bay and fishermen worked almost continuously. Loud, raucous music such as was often played on deck was a particular source of irritation, as was the occasional sound of a gun being fired by a fisherman to dispatch a large halibut before it was brought into the boat.<sup>NNN</sup>

In one instance, probably in 1981, a kayaking guide for Alaska Discovery, the kayak rental and guiding concessioner at Glacier Bay at that time, was camped with his clients in the Beardslee Islands. It was during a halibut opening, and the clients complained of the noise. He explained to the group that the designation of the Beardslees as wilderness under the Alaska National Interest Lands Conservation Act (ANILCA) might end commercial fishing in the islands. Their response was that it could not happen fast enough.<sup>435</sup>

This conflict between backcountry recreational users and commercial fishermen was a management issue, and the NPS recognized the need to know more about commercial

fishing.<sup>436</sup> There were also increasing feelings that commercial fishing was inappropriate in a national park, and a developing interest in the concept of Glacier Bay as a marine reserve.

Seasonal employee Mike Taylor, whose background in fisheries was limited to his having taken an ichthyology class in college, was charged with doing a preliminary assessment of Glacier Bay N.P.'s fisheries. He began work on the project in 1984, and his report, "The Fisheries of Glacier Bay National Park and Preserve," was completed in May 1985. Taylor mapped the locations of Dungeness crab pots as well as where halibut gear was set, but most of his work involved searching through existing literature and catch data to glean what was relevant to Glacier Bay. Taylor acknowledged early on that because so little was known about Glacier Bay's marine ecosystem, it was difficult to address the ecological impacts of commercial fishing.<sup>437</sup> Nevertheless, he did not refrain from making a value judgment: "The ecological and aesthetic impacts of the [commercial fishing] activity while lacking quantification, are inappropriate," and noted that "Uncertainties regarding the standing and future of commercial fishing activities strain the planning of Park managers and fishermen alike."<sup>438</sup>

Among Taylor's recommendations were:

- Seek congressional resolution of the status of commercial fishing;
- Close Glacier Bay proper to halibut fishing during visitor season (June through August);
- "Grandfather" Dungeness crab fishermen who fished in Glacier and Dundas bays in 1984;
- Allow no new commercial fisheries to develop; and,
- Develop a quantitative model of the marine ecosystem.

Taylor pointed out the effect the closure of Glacier Bay would have on commercial fishermen:

The experienced fishermen have invested years in learning the waters. If forced to fish elsewhere, they would have to compete with other fishermen already established in those areas. There might be greater

<sup>NNN</sup> Shooting halibut is not a common practice among experienced commercial fishermen. As one very experienced fishermen told the author: "If you're hauling your gear efficiently, there simply isn't time."

travel costs and reduced operating efficiency on the unfamiliar, perhaps crowded grounds.<sup>439</sup>

Fishermen and their advocates would echo this accurate analysis constantly once the effort to close Glacier Bay to commercial fishing gained momentum.

Taylor also pointed out what the NPS already knew well from experience:

Significant restriction of existing commercial fishing within the Park would be expected to generate strong objections from local communities, including the Native community of Hoonah, whose traditional home is Glacier Bay. The State of Alaska would defend the fishing interests, in court if necessary, and the State's Congressional delegation would also be a formidable opponent.<sup>440</sup>

#### **Perry Report**

The commercial fishing effort in Glacier Bay continued to grow to such an extent that just two years after Mike Taylor had completed his report, resource managers thought a more current evaluation of commercial fishing was necessary. Managers were particularly interested in obtaining quantitative data on the commercial fishing effort and catch. In the spring of 1987, the NPS hired marine biologist Anjanette Perry as a seasonal biological technician to put together a comprehensive report on commercial fishing in Glacier Bay N.P. (Perry's husband, Scott Baker, was at the time doing whale research at Glacier Bay.) She began by standardizing reports for monitoring commercial fishing. Backcountry rangers were to record all commercial fishing vessels by name, date, location, size, activity, and home port. Dungeness crab pots were to be counted monthly and their locations mapped, unusual events or circumstances recorded, and rangers were to try to obtain historical and sociological information from fishermen, such as how long they had been fishing in Glacier Bay N.P. and why they preferred to fish there.<sup>441</sup>

Perry completed her study, "Commercial Fishing in Glacier Bay National Park," later that year. The 45-page report emphasized developments in the fisheries after 1983. It

described the biology of the major commercially harvested finfish and shellfish, reported on commercial fishing activities, including the types of gear used, etc., considered the biological and economic impacts of commercial fishing in the Park, and proposed management actions to insure the health of Glacier Bay NP's marine ecosystem.<sup>442</sup> Perry wrote that the NPS at present had "no inclination to establish a general prohibition of or phasing out of commercial fishing in Glacier Bay."<sup>443</sup> Her report was thought to have potential as a foundation for a Glacier Bay N.P. commercial fisheries management program.

In prefacing her recommendations, Perry noted that there was "no crisis situation yet" because Glacier Bay N.P. was "blessed with abundant resources and low overall use."<sup>444</sup> She added, however, that the lack of a clear management policy was not in the best interest of park managers, fishermen or the public.

Perry was very interested in obtaining quantitative information about Glacier Bay's fisheries. Despite ADF&G's agreement in the 1982 memorandum of understanding to share fisheries information with the NPS, a lack of clear guidelines for what information would be provided, in what form it would be provided, and when it would be provided hampered the NPS's ability to understand the fisheries in Glacier Bay. She compiled a long and probably unrealistic list of information she thought ADF&G should be supplying the NPS on a regular basis. She also reiterated the need for ADF&G to establish Glacier Bay proper as a separate statistical reporting area. (This would not be the last time the request was made.) If this was not feasible, Perry suggested the NPS establish a registration system for all commercial fishermen using Glacier Bay, who would be required to report their catch. This idea had been rejected by the NPS several years earlier as too controversial.

Perry thought commercial fishing should be phased out of wilderness waters through the issuance of non-transferable lifetime access permits (LAPs). Another option was to close wilderness waters to commercial fishing only in the summer.

In concluding her report, Perry cited the need for systematic monitoring and analysis of the development of Glacier Bay's commercial fisheries. With good data in hand, Park management could then rapidly implement policies



to limit resource damage and prevent conflicts with visitors and other Park activities.<sup>000</sup>

Perhaps as a follow-up to Perry's recommendations, in the early summer of 1989 volunteers monitored vessel traffic in the Beardlee Islands. Most of the traffic that year was Dungeness crab vessels, and a non-systematic survey of crab pots determined that there were at least seven vessels fishing.<sup>445</sup>

Nearly a decade would pass before the NPS at Glacier Bay hired a full-time fisheries biologist. Chad Soiseth, who fulfilled that role beginning in 1996, was tasked to obtain commercial fishing effort and harvest information for Glacier Bay N.P. Soiseth had training as an ecologist, and had been working as a seasonal biological technician at Glacier Bay since 1992. A frustrating aspect of his work was the perpetual difficulty of obtaining useful information from ADF&G and other fisheries management agencies. The department had long opposed any efforts to restrict commercial fishing in Glacier Bay, and it was not inclined to provide information that would further the effort. Furthermore, ADF&G was legally constrained by statutory confidentiality requirements that did not allow disclosure of information on activity by three or fewer fishermen in a single statistical area, or the release of fish ticket landing information or annual statistical reports of buyers or processors except to specified agencies. The NPS was not on the list of specified agencies.<sup>446</sup>

### **Biosphere Reserve and World Heritage Site**

The International Man and the Biosphere to Program was established by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1970. Its purpose was to protect internationally important areas for research and monitoring, to reduce biodiversity loss, and to enhance environmental sustainability through the establishment of a world-wide network of biosphere reserves. In 1986, UNESCO designated Glacier Bay and Admiralty Island as the Glacier Bay-Admiralty Island Biosphere Reserve. Six years later, in another major action, UNESCO recognized Glacier Bay and three neighboring parks — Wrangell-Saint Elias in the U.S. and Kluane National Park and Tatshenshini-Alsek Pro-

vincial Park in British Columbia, Canada—as being of “outstanding value to humanity,” and designated the group as a World Heritage Site. As a signatory to the 1972 UNESCO World Heritage Convention, the U.S. recognized its duty to protect the area for future generations.<sup>447</sup> “Illegal” commercial fishing was an issue in the World Heritage Site evaluation process, but the review board determined that this “threat to the integrity” of the site was being addressed.<sup>448</sup> While these designations pointed out its value and raised its profile, Glacier Bay was already protected as a national park. The designations had no direct effect on commercial fishing.

### **NPS Dock at Bartlett Cove**

The dock at Gustavus is a rickety structure that is completely exposed to Icy Strait's west and southwest winds, which are often considerable. Some say that the most dangerous thing one can do with a boat in Gustavus is tie it to the Gustavus float and leave. The wind and tide can quickly conspire to make the float leap and buck so violently that boats have suffered major damage. A few individuals trying to work on the dock in such conditions have gotten seasick. The NPS dock at Bartlett Cove, on the other hand, is a substantial affair in a relatively sheltered location. It is often usable when the Gustavus dock is not. The NPS dock was constructed at taxpayers' expense, and commercial fishermen—hoping to retain or increase their access to it—did not tire of reminding the NPS that they are taxpayers.

Commercial fishermen are allowed to tie to the dock and float during the visitor season, but, as with all types of boats, are subject to time limitations. Park Superintendent Marvin Jensen recalled that at least one fisherman regularly left his boat tied to the dock for more than the allowed time, perhaps just to irritate the NPS people who were working to close Glacier Bay to commercial fishing.

Dock regulations were relaxed during the non-visitor season, but a number of local fishermen wore out their welcome by staying tied to the float for weeks. The NPS eventually established a policy to regulate how long vessels could remain tied to the dock during the non-visitor season.

<sup>000</sup> In 1990, Anjanette Perry and Mike Taylor co-authored “Commercial Fishing Patterns in Glacier Bay National Park, Alaska,” which was published in A. M. Milner and J. D. Wood Jr, editors, *Second Conference on Scientific Research in the National Parks*. U.S. National Park Service, Glacier Bay National Park & Preserve, AK. The report was fundamentally a distillation of the earlier reports done by Perry and Taylor.

Bears were on occasion unexpected and unwanted visitors on fishing boats at Bartlett Cove. On one occasion, Tom Traibush's *Fat Man*, smelling of fish, was left tied to the dock and a black bear, attracted to the smell, was found rummaging around on the boat and chased off. Another time, a black bear boarded an unoccupied troller tied to the dock and helped itself to salted salmon that were kept in a barrel on deck. And there was the night around 1970 that a black bear boarded a seine boat tied to the dock and poked its head into an open hatch, below which was the head of a soon-to-be startled crewmember.<sup>449</sup>

In about 1985, Glacier Bay Superintendent Mike Tollefson established a policy for use of the Bartlett Cove dock by commercial fishing interests. Fishermen and processors were allowed pretty much unrestricted access to the dock except during the primary visitor season—usually defined as when Glacier Bay Lodge was operating, approximately late May until late September. During the non-visitor season the amount of fisheries product crossing the dock was comparatively small: mostly Dungeness crab and king salmon in October and November, some Tanner Crab during the winter, followed by some halibut in the spring. During the primary visitor season, fishermen and processors were not permitted to move fish across the dock.

A one-year exception to this policy was made for Tom Traibush, who supplied Dungeness crab to Glacier Bay Lodge. In about 1985 or 1986, Tollefson gave Traibush a special use permit to keep a live box attached to the dock and to move up to 40 percent of his total volume across the dock for sale outside the Park. The fee for the permit was \$100. Traibush asked for the permit the following year, but was informed that the NPS “wasn't doing that anymore.”<sup>450</sup> Traibush, and later Matt Metcalf, continued to supply Glacier Bay Lodge with crab via the Gustavus dock.

The permit that was issued to Traibush was significant in that it was the second issued by the NPS to a commercial fishing operation at Glacier Bay. The first was for the salmon trap at Point Gustavus in 1952.

Tollefson seemed to enjoy himself at Glacier Bay and got along well in the community. Likely in part because the NPS wasn't pressing the commercial fishing issue, he also got on well with commercial fishermen. Tom

Traibush recalled that the outboard motor on the *Fat Man* once unexpectedly quit while he was fishing in the Beardslee Islands early one morning. Traibush anchored his boat, and a passing boat gave him a ride to Bartlett Cove, where he knocked on the door of the superintendent's residence. Tollefson answered, and Traibush explained his situation and asked to borrow his personal skiff to tow the *Fat Man* back. Without hesitating, Tollefson gave him permission.

Tollefson left Glacier Bay in September 1987. With his departure the NPS's “open door” policy toward commercial fishing began to close. He was succeeded several months later by Marvin Jensen, who would initiate the controversial effort to terminate commercial fishing in Glacier Bay N.P. For the commercial fishing industry, things would never be the same.

# Chapter 7: NPS Moves to Curtail Commercial Fishing in Glacier Bay

## Superintendent Marvin Jensen's Initiative

Marvin Jensen transferred from Sequoia N.P. to become superintendent of Kenai Fjords N.P., where he spent less than a year before accepting the position of superintendent at Glacier Bay N.P. (see Figure 29). His arrival at Glacier Bay in January of 1988 was completely unceremonious. Often on such occasions the new superintendent is formally installed by the Service's regional director. Marvin Jensen pretty much showed up at Bartlett Cove and went to work. He had been given no marching orders by the Park Service, and felt he no immediate pressure from Alaska's congressional delegation or governor. His chief ranger, Dave Spirtes, who had been at Glacier Bay less than a year, helped apprise him of current and potential issues. High on the list was the need to complete the park's vessel management plan, and doing so became Jensen's first priority.<sup>451</sup>

In the months prior to Jensen's arrival, Tollefson and his staff had been finishing up on what seemed to be a Congressional second bite at the apple. In addition to designating wilderness in Alaska parks and withdrawing lands for new or expanded national park service units in Alaska, ANILCA required the NPS to evaluate all remaining non-wilderness lands in Alaska's parks for their suitability for wilderness designation, and to make recommendations to Congress.<sup>452</sup> To reflect "public interests and management needs," the NPS at Glacier Bay expanded the effort to include an evaluation of the suitability of the wilderness areas already designated by ANILCA.<sup>453</sup>

The effort was mostly perfunctory, as few thought Congress would actually be willing to re-open the landmark environmental legislation. To national environmental organizations in particular, ANILCA had become almost sacred, and not to be tampered with.

In April 1988, the NPS published its Glacier Bay wilderness recommendation draft environmental impact statement (DEIS). The work—actually completed under Tollefson—was a classic land use planning exercise that attempted to classify lands according to their "highest use." Of the four alternatives presented, only one, the "No Action" alternative, did not recommend the deletion of the Beardslee Islands from wilderness status.<sup>454</sup> One of the

primary reasons for the recommended deletion of the Beardslee Islands was an NPS desire to accommodate ongoing commercial fishing activity.<sup>455</sup> The final environmental impact statement (FEIS) was released in September. In it the NPS's proposed action recommended deleting the Beardslee Islands from wilderness status while establishing new wilderness areas in Muir Inlet above Sealers Island and in Wachusett Inlet.<sup>456</sup>

In the fall of 1988, Spirtes briefed Jensen regarding the commercial fishing that was occurring in the park—some in waters designated as wilderness—and explained how NPS regulations that he believed broadly prohibited commercial fishing had not been enforced. Jensen considered commercial fishing inappropriate for a national park, particularly in wilderness, and wanted to get the issue resolved. He thought this could be done administratively, and attempting to do so ranked second on his list of priorities. He knew it would take time and a lot of work, but probably underestimated the complexity of the issue and the controversy engendered by it. Nevertheless, Jensen can be credited as the first Glacier Bay superintendent to comprehensively address the commercial fishing issue.

The nearby wilderness waters of the Beardslee Islands, where the NPS had legal leverage under the Wilderness Act, was a reasonable place to start. Jensen enjoyed rowing and kayaking in the Beardslees, and he was of the firm opinion that commercial fishing was not an appropriate activity in them. He felt no need to compromise on the issue. In November he recommended to regional director Boyd Evison that Beardslee Entrance be deleted from wilderness, but that the inner Beardslee Islands be retained. This system of islands and waterways, he wrote, "is remarkably unique in its scenic beauty and opportunity for experiencing wilderness qualities for the novice kayaker or boater. It is an easily accessible wilderness waterway where one may take a wilderness trip in part of Glacier Bay without having to pay the cost of an upbay trip on one of the tour or charter boats or brave the more difficult waters of the main part of the bay."<sup>457</sup> Beardslee Entrance, from which much of lower Glacier Bay and its vessel traffic could be seen,





Figure 29: Glacier Bay N.P. Superintendent Marvin Jensen (courtesy Marvin Jensen)

was considered less valuable as wilderness.<sup>458</sup> As Jensen knew well, the retention of the Beard-sleeves' wilderness designation would likely result in the termination of the locally important Dungeness crab fishery.

Jensen's letter was well received, and the following month William Penn Mott, director of the National Park Service, sent a proposed alternative modified in accord with Jensen's recommendation to the Secretary of the Interior's office. As with previous efforts to modify wilderness boundaries in Glacier Bay, no action was taken.

With his comments on wilderness boundary changes, Mott included Jensen's thoughts on the direction the NPS should take on the issue of commercial fishing in Glacier Bay: "We must operate on the premise that the long-term direction of this agency will be to ultimately eliminate commercial fishing ... In the short term, we should find a reasonable way to allow those who are currently commercially fishing the waters of Glacier Bay be allowed to continue, but only for a definite specified period of time and that no new fishing or fishermen

should be allowed to start." For Glacier Bay's designated wilderness waters, Mott thought that commercial fishing could be allowed to continue for a period not to exceed twenty years. If necessary, however, he was willing to compromise and allow fishermen who had been fishing in Glacier Bay's wilderness waters since the passage of ANILCA to continue for the remainder of their lives. Mott acknowledged that his time frame was somewhat subjective, but reasoned that it allowed for present uses to continue without opening the door to those who had fished in Glacier Bay's wilderness waters in the past but had moved on.<sup>459</sup> For Jensen, Mott's support was a signal to proceed.

In January 1989, George H. W. Bush succeeded Ronald Reagan as U.S. president. Like Reagan, Bush was a Republican; unlike Reagan, Bush was a moderate on the environment, a fact that may have encouraged the NPS to forge ahead.

With the support of Jensen, Spirtes actively pursued ways to address the commercial fishing issue. In a June 1989 staff briefing at Bartlett Cove, Spirtes raised more than 20 questions relating to the activity. Among them was the question of NPS jurisdiction over marine waters and the appropriate role of rangers in enforcing commercial fishing regulations. He questioned the appropriateness of commercial fishing in wilderness as well as non-wilderness waters of Glacier Bay N.P., its effect on the natural ecosystem and park visitors, the use of the Bartlett Cove dock and park road by commercial fishing interests, and whether it was a conflict of interest for NPS employees to fish commercially in Glacier Bay.<sup>PPP</sup> And he pondered how commercial fishermen might be bought out.<sup>460</sup>

Marvin Jensen and Dave Spirtes decided to elevate the profile of the commercial fishing issue. They directed Ranger Mike Sharp to expand the commercial fisheries monitoring program in Glacier Bay and, perhaps more important, to establish the NPS's first program to enforce ADF&G regulations in the Bay. The NPS's authority to

<sup>PPP</sup> A long-standing personnel regulation prohibits an NPS employee from engaging in any commercial business in a park in which he is employed. The NPS at Glacier Bay determined that commercial fishing in Glacier Bay by an NPS employee, permanent or seasonal, was a conflict of interest. Leon Snyder, who worked in the maintenance division at Glacier Bay and trolled from the vessel *Idle Hour*, was told to choose between commercial fishing in Glacier Bay and his position with the NPS. Snyder chose the former. Sharon Waguespack, an NPS employee whose husband, Dean, had fished commercially part time for a number of years, including in Glacier Bay, was told that it was a conflict of interest for spouses of NPS employees to fish commercially in Glacier Bay.

enforce the regulations was not in question; as had become customary, those relevant to Glacier Bay N.P. had been assimilated into the Code of Federal Regulations.

Sharp designed the enforcement program, which was focused almost completely on the Dungeness crab and halibut fisheries, in consultation with Howard Starboard, the ADF&G enforcement officer stationed at Hoonah. In 1989, NPS rangers began boarding commercial fishing vessels to check documents, examine gear, and measure fish. When boarding vessels, the rangers adhered strictly to procedures established by ADF&G enforcement officers. Vessels were boarded only when it was convenient for fishermen, not, for instance, when they were in the process of setting or hauling halibut gear. Additionally, rangers hauled crab pots (at first by hand, later with a hydraulic puller) to check the gear's compliance with ADF&G regulations. Mike Sharp recalled that few violations were encountered and very few citations were issued. Nevertheless, it was not unexpected that the boarding/enforcement program—effectively an assertion of the NPS's authority over Glacier Bay's fisheries—increased the tension between commercial fishermen and the NPS.<sup>461</sup>

In July 1989, the NPS produced a draft briefing statement that outlined four possible courses of action regarding commercial fishing in Glacier Bay: (1) enforce current regulations [including the 1983 regulation that prohibited commercial fishing in national parks except where specifically authorized under federal statutory law; the prohibition on unauthorized commercial enterprises within the park; and the prohibition of commercial fishing in designated wilderness areas.] The enforcement of these regulations would cause an immediate closure of commercial fishing in Glacier Bay N.P.; (2) work to amend ANILCA to allow commercial fishing; (3) continue to not enforce commercial fishing regulations; and, (4) develop a phase-out regulation. The NPS dismissed the first option, the enforcement of current regulations, because it was thought that the furor that would erupt would compromise community relations, and possibly cause a “political maelstrom” that would result in legislation to legalize commercial fishing in the park. Within the context of an immediate closure, however, the agency indicated that it would be willing to consider the compensation of displaced fishermen. The second

option, amending ANILCA, was thought to lack popular support. Option 3, the continued non-enforcement of commercial fishing regulations, was deemed unacceptable from a legal and policy perspective. Option 4, a phase-out of commercial fishing in Glacier Bay National Park over a scheduled period of time, became the preferred course of action.<sup>462</sup> Perhaps as a bargaining chip, however, the threat of an immediate closure remained: “We have determined to take no legal action for this year against those who engage in ... commercial fishing activities in order to avoid confrontation and give us time to evaluate the situation,” Jensen wrote in an August 1989 letter to the Southeast Alaska Conservation Council.<sup>463</sup> Jensen had some experience with immediate closures of established uses in other parks, and personally believed that some sort of phase out would be best.<sup>464</sup>

To garner support for the phase out of commercial fishing in Glacier Bay, the NPS raised the issues of conservation and overfishing, and made what is probably the first agency mention of the concept of Glacier Bay as a marine sanctuary. A draft briefing statement written in July 1989 stated that “To compromise the unique marine resources of Glacier Bay National Park by permitting commercial fishing would be a tragic loss of a true marine sanctuary,” and added that “The lack of effort to eliminate or control commercial fishing enterprises within the park has resulted in an expansion of fishing pressure which may have severely depleted some fishery resources in some habitats.”<sup>465</sup> The claim was qualified the following month in an official briefing statement: “resource damage has not been proven.”<sup>466</sup>

The NPS also began courting the State of Alaska. In August 1989, the Service provided a summary document, “Commercial and Subsistence Fisheries Management in Glacier Bay,” to the state, and expressed a desire to pursue cooperative management and research programs. As it had been doing for a decade, the NPS proposed again that ADF&G adopt a statistical reporting area that encompassed only Glacier Bay.<sup>467</sup> Such was never to be the case, because the State of Alaska was very much opposed to the closure of Glacier Bay N.P. to commercial fishing and was working to hinder the NPS effort. The same request was made to the National Marine Fisheries Service (NMFS) regarding halibut. NMFS agreed, and in 1992

a statistical reporting sub-area (184) was established for Glacier Bay proper.<sup>468</sup>

Some of the shareholders of the Sealaska Corp., Southeast Alaska's regional Native corporation, had longstanding cultural and economic interests in Glacier Bay. Robert Loescher, a Sitka Native with clan ties to Glacier Bay, and big supporter of Senator Frank Murkowski, was the corporation's president.<sup>QQQ</sup> In October 1989, Jensen drew a line in the sand when he sent Loescher a letter stating that "Since there is no federal statutory law that allows commercial fishing within the boundaries of Glacier Bay National Park, commercial fishing is prohibited within the park."<sup>469</sup> Jensen added that details implementing the commercial fishing prohibition had not yet been developed. Such a prohibition would have an impact on a number of Sealaska shareholders, particularly the commercial fishermen in Hoonah, many of whom fished in Glacier Bay N.P. Not long after receiving Jensen's letter, Sealaska introduced the first conceptual draft of federal legislation designed to "fix" the Glacier Bay problem. Though little noticed at the time, it may have been the basis of legislation introduced by Senator Murkowski the following year.<sup>470</sup>

Jensen saw the commercial fishing issue as black and white. His early approach to the region's Native people, many of whom were represented by Sealaska, lacked the sensitivity that at least some in the NPS were working to cultivate, and his approach was ultimately counterproductive. Rather than trying to accommodate them (to the extent legally possible) as a people with longstanding and very deep cultural ties to Glacier Bay, a people whose rights in their ancestral homeland were incrementally being eroded, Jensen appeared to view the region's Natives simply as another special interest group whose use of the park for commercial fishing (and other traditional activities) was at odds with park purposes and values.<sup>471</sup> Jensen apparently did acknowledge that when the monument was established, unidentified "government men" had likely

assured local Natives that they would always be welcome at Glacier Bay.<sup>472</sup> But things had changed, and his initial approach toward the region's Natives substantially soured the NPS's often touchy relationship with the Native people, particularly those in Hoonah.<sup>RRR</sup><sup>473</sup> Realizing his error, Jensen eventually laid the groundwork to mend the NPS's relationship with the people of Hoonah. However, as a committed advocate of restrictions that were resented by a people whose culture and economy were intricately tied to the sea, any expression of understanding on his part was discounted.<sup>SSS</sup><sup>474</sup> It was not until after Jim Brady succeeded him as superintendent that a substantial element of respect and workability was brought back into the relationship.

In their contention that current regulations prohibited commercial fishing in Glacier Bay N.P., Jensen and Spirtes were on less than solid ground. And they knew it. A January 22, 1990 memorandum on fishing issues in Glacier Bay N.P. prepared at the Park Service's Alaska regional office cited DOI solicitor J. Roy Spradley's 1983 opinion that commercial fishing was permitted in the non-wilderness waters of Glacier Bay N.P.<sup>475</sup> Spradley's opinion, however, did not curb Spirtes and Jensen's enthusiasm for terminating commercial fishing in Glacier Bay. Based on their own reading of relevant legislation and existing regulations, they concluded that Spradley's opinion was flawed.<sup>476</sup> A similar belief seems to have prevailed in the NPS hierarchy as well, for the Service continued its refrain that commercial fishing in Glacier Bay was illegal and a direct contradiction with the agency's statutorily mandated duties to preserve Glacier Bay's marine ecosystem.

Glacier Bay N.P. was not the only unit in the national park system in which a commercial fishing took place. Legal provision existed for commercial fishing in 34 units of the national park system. The legal rationales for the allowances varied and were not always the same. They included the recognition of

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<sup>QQQ</sup> Loescher is a member of the Chookaneidi clan, the people of Glacier Bay. The for-profit Sealaska Corporation was authorized under the Alaska Native Claims Settlement Act (1971), and has some 17,300 shareholders.

<sup>RRR</sup> Tomie Lee, who became superintendent of Glacier Bay N.P. in 1998, wrote in 2000 that the relationship between the NPS and the Hoonah Tlingits in earlier years had been "badly broken, and that federal government and park service actions or inactions were responsible for that situation," and added that at the time of the writing there were "sincere efforts to build bridges and heal wounds."

<sup>SSS</sup> Privately Jensen did reach out. The author was a guest at a breakfast held in honor of Hoonah Tlingit elders George and Jesse Dalton that Jensen and his wife, Mary Lynn, hosted in their home. The affair was very pleasant for all present.

colonial law (Acadia N.P.), Native American treaty law (Olympic N.P.), and provisions in enabling legislation (Assateague Island National Seashore). In Alaska, the Alaska National Interest Lands Conservation Act (ANILCA) specifically authorized commercial fishing activities at Cape Krusenstern National Monument, the Malaspina Glacier Forelands of Wrangell-Saint Elias National Preserve, as well as in the Dry Bay area of Glacier Bay National Preserve.<sup>477</sup>

In January 1990, the NPS determined that commercial fishing in Glacier Bay N.P. was a “consumptive use that may be having a significant effect on park resources and values and is inconsistent with the mission of the NPS to conserve and protect the resources unimpaired for present and future generations.”<sup>478</sup> A contemporaneous NPS or DOI memorandum (possibly a draft) that reviewed the legal and regulatory issues related to potential restrictions on commercial fishing in Glacier Bay N.P. naively advised that the NPS take “immediate steps to prohibit all commercial fishing in designated wilderness waters.” The memorandum added that a courtesy public notice of the prohibition might be advisable.<sup>479</sup>

Jensen and the NPS knew that any restrictions that would unduly disrupt traditional fishing practices would generate fierce opposition from commercial fishing interests, the State of Alaska, and others. Nevertheless, a course was chosen and set in motion—to “initiate studies of the extent and effects of commercial fishing and establish a program with the long range goal of ultimately eliminating this use”—that ignited what was certainly one of the largest challenges ever faced by the National Park Service in Alaska.<sup>480</sup>

Jensen had little precedent to draw on, but in his endeavor retained support at the highest levels in the NPS. In February 1990, James Ridenour, the new director of the NPS, reiterated his agency’s legal responsibility to enforce regulations that prohibited commercial fishing. He also, however, expressed a willingness to support compromise legislation that might settle the issue. Quoting Ridenour: “we do agree to consider supporting legislation that could allow commercial and subsistence fishing in marine waters of Glacier Bay. This would need to be based on sound scientific data demonstrating the biological and environmental compatibility of these activities with

the purposes of the park.”<sup>481</sup> Ridenour had met in January with congressional staff and representatives of Alaska’s governor’s office, and had agreed to help U.S. Senator Ted Stevens craft a “housekeeping” amendment to ANILCA that would allow commercial fishing “subject to some constraints.”<sup>482</sup>

Though the NPS hierarchy might have been willing to accept a legislative fix to the issue, the staff at Glacier Bay proceeded with the regulatory process. At a public meeting in Juneau, likely in February or very early March of 1990, the NPS formally announced its intention to phase commercial fishing out of Glacier Bay. As was expected, this caused substantial concern among commercial fishermen.<sup>483</sup>

On March 7, NPS officials, including regional director Boyd Evison, privately met with ADF&G officials. For a short while, at least, the NPS seems to have lost its desire for a bold initiative in Glacier Bay, because at this meeting Evison and his group proposed an alternative to a phase-out of commercial fishing in Glacier Bay. Their proposal was to initiate a comprehensive research program to determine what effect commercial fishing had on the resources and other uses of the park. The research program would last for approximately seven years, and during that time status quo commercial fishing would be allowed to continue, including in designated wilderness waters. At the end of the study period the NPS would analyze the information and determine what direction it would take concerning the continuation of commercial fishing.<sup>484</sup> The proposal, which was apparently never put into writing, seems to have evaporated into thin air.

Meanwhile, rumors spread through the region of an imminent closure of Glacier Bay to commercial fishing, so as a result, area residents and fishermen quickly contacted the Citizens’ Advisory Committee on Federal Areas (CACFA), a state-sponsored group.<sup>485</sup> Among its duties, the CACFA was chartered to report to the legislature and the governor on the impact of federal regulations and federal management decisions on Alaskans.<sup>486</sup> The organization reacted immediately. To assess public opinion on the possible closures and to discuss alternatives that might resolve the issue, CACFA in March 1990 held meetings in five Southeast Alaska communities (Gustavus, Hoonah, Juneau, Pelican, and Yakutat).<sup>487</sup> Testimony at every meeting strongly supported the continuation of commercial fishing in

Glacier Bay N.P.<sup>488</sup> CACFA considered federal legislation that would specifically provide for the continuation of commercial fishing in Glacier Bay N.P. to offer the best long-term resolution of the issue.<sup>489</sup>

Some within the ranks of the NPS urged caution on the Glacier Bay issue. Ross Kavanagh, the Service's regional fisheries biologist, noted an "apparent increase in enthusiasm" among the Glacier Bay N.P. staff and regional office managers to phase out commercial fishing in Glacier Bay N.P. To counter that enthusiasm, he cautioned broadly that "just about every individual and institution who matters will be against the proposal, with solid justifications at hand." Kavanagh cautioned specifically that fisheries research in Glacier Bay "will likely provide little or no biological justification for a phase-out."<sup>490</sup> There was, however, another way for the NPS to biologically justify a phase-out, which was to broaden the issue by citing worldwide depletions of fish populations and stress the potential benefits of Glacier Bay as a marine sanctuary: if a national park could not be a marine sanctuary, then where? It was not until his last couple of years at Glacier Bay that Superintendent Jensen began making this point, primarily to NPS audiences and conservation groups. He was influenced to do so in part by Bill Brown, a semi-retired NPS historian who resided in Gustavus. In formal speeches Brown had been citing the need and importance of national parks as refugia for comparison over time with non-protected areas to help understand the effects that consumptive uses were having on ecosystems in general.<sup>491</sup>

It should be noted that the *Exxon Valdez* oil spill that occurred in Alaska's Prince William Sound in 1989 had some bearing on NPS efforts to protect Glacier Bay as a marine sanctuary. As a sanctuary, Glacier Bay could provide baseline data with which damage such as was done by the *Exxon Valdez* could be measured. The oil spill also raised public awareness of the need to protect marine environments.

In late April 1990, John Katz, of the Alaska governor's office in Washington, DC, submitted a letter to NPS Director Ridenour proposing legislation to settle the Glacier Bay issue.<sup>492</sup> A short while later Alaska Governor Steve Cowper, Senators Ted Stevens and

Frank Murkowski, and Representative Don Young sent a joint letter to Alaskans. The politicians had concluded that the best way to resolve the uncertainty over commercial fishing (and subsistence) in Glacier Bay was through legislation that would be introduced by Senator Murkowski, who, among Alaska's delegation to Congress, generally took the lead on Glacier Bay issues. The legislation they proffered would allow commercial fishing in all areas of Glacier Bay at a level not significantly greater than that existing in 1989, and would authorize a cooperative study of up to seven years by state and federal agencies to determine the effects of commercial fishing on the resources of Glacier Bay. Commercial fishing would be allowed to continue until the study was complete, at which time the situation would be re-evaluated.<sup>493</sup> Ridenour reacted to the proposal by stating that "proper" legislation could "supplement the regulatory process." Ridenour pointed out that his agency had no administrative or regulatory power to allow commercial fishing in Glacier Bay's wilderness waters, and that it did not favor any legislative exceptions to the Wilderness Act that would permit it to do so.<sup>494</sup>

It must be noted that in 1990 Alaska's entire delegation to Congress were members of the minority (Republican) party. Without support among the Democratic majority, any legislation they introduced stood little chance of becoming law. The fact that this legislation would conceivably alter some of what had been accomplished under ANILCA meant that it was likely to be strongly opposed by those who had worked so hard to pass the landmark conservation measure.

With potential legislation on the table, the NPS proceeded with the development of its regulations, and in May 1990, Boyd Evison, NPS Alaska regional director, wrote to Don Collinsworth, commissioner of ADF&G to inform him that the service was nearing a proposed regulatory solution. He requested a conference with Collinsworth and his staff to discuss the matter. Evison also requested that ADF&G acknowledge that wilderness waters in Glacier Bay were closed to commercial fishing, and asked that ADF&G's regulatory publications reflect those closures.<sup>495</sup> At that time, however, there was no way the State of Alaska was going to acknowledge NPS jurisdiction over any fisheries in Glacier Bay.



An important change in personnel at Glacier Bay occurred in the spring of 1990 when Dave Spirtes was succeeded as chief ranger by Randy King. By virtue of his temperament and abilities and fairly long tenure as chief ranger, King over time became the Service's lead person and strategist in Alaska on the Glacier Bay commercial fishing issue, serving under three superintendents. He was a somewhat reluctant occupant of this position. The fact that the NPS had tacitly approved commercial fishing in Glacier Bay N.P. for many years and had allowed the industry to develop caused him to question the fairness of the NPS's somewhat abrupt decision to terminate it. To his credit and to the NPS's and public's benefit, he did not try to bureaucratically finesse this controversial issue. Without compromising the values of the agency that employed him, King honestly tried to understand and accommodate the various interests. He later said the issue was the most difficult he ever faced in his NPS career. It was complex, there was a heavy workload, and a lot of emotion was involved. And those who would be affected weren't, in his words, "abstract concepts," but friends and neighbors. He nevertheless recognized his obligation to manage Glacier Bay as a national park that "belongs to the person in New Jersey as much as it does someone who lives here."<sup>496</sup>

In July 1990, after a conceptual review by ADF&G, the regulatory package was sent to the NPS Washington, DC office for review.<sup>497</sup> That same month, however, Senator Murkowski was ready with a legislative solution—not yet made public—that was different than that proffered in the spring. The legislation drafted by Murkowski would amend ANILCA and "clarify the status of fishing activities in Glacier Bay National Park." The gist of his legislation was that commercial fishing—except for bottom trawling—would be permitted in the waters of Glacier Bay N.P., including areas designated as wilderness, but limited to an extent not significantly greater than the effort during 1989.<sup>498</sup> Some of the draft legislation's language was identical to that in material provided to the State of Alaska the previous July by Birch, Horton, Bittner and Cherot, a law firm that may have been retained by Sealaska.<sup>499</sup> The proposed legislation was reviewed by the Governor's Office and by ADF&G. (In an October letter to Robert Loescher of Sealaska, Governor Cowper said that his office had been

"working with" Senator Murkowski in drafting the legislation.<sup>500</sup>) In mid-August 1990, seemingly unaware that legislation was being developed, the NPS wrote that it had the support of Alaska's congressional delegation for a proposal to implement the interim regulations authorizing continued commercial fishing in the park during a 7-year study period.<sup>501</sup> Two weeks later the NPS learned that Murkowski had a solution of his own, and the following month the agency described the senator's office as being "ready to roll."<sup>502</sup>

The NPS, of course, did not favor Murkowski's legislation. Likewise, The Wilderness Society, headed by George Frampton, who would later become an Assistant Secretary of the Interior in the Clinton administration, and the National Parks and Conservation Association "strongly opposed" it.<sup>503</sup> Although Murkowski's legislation would guarantee access to Glacier Bay's fish, some fishermen found fault with it: the Alaska Trollers Association (ATA) did not want its production to be capped at the 1989 level.<sup>504</sup> Nevertheless, ATA thought that legislation "may well be our only hope of permanent resolution to the problem."<sup>505</sup>

#### **AWA v. Jensen**

One interest group that was not waiting for Congressional legislation or for the NPS to deal with the commercial fishing issue administratively was the Alaska Wildlife Alliance (AWA). Founded by a group of Alaskans in 1978, the AWA, which The Wilderness Society called "a particularly militant conservation organization," described its mission as "the protection of Alaska's natural wildlife for its intrinsic value as well as for the benefit of present and future generations."<sup>506</sup> The organization had a longstanding interest in Glacier Bay and had been frequently critical of the NPS's whale and fisheries management, and what it termed "acquiescence" to the cruise ship industry and park concessioners. The group believed that "protection of the wilderness and wildlife resources in the Bay outweigh the economic benefits derived from commercial fishing," and it maintained that commercial fishing should be phased out of Glacier Bay, at least during the summer.<sup>507</sup> On August 21, 1990, after years of disagreement with the NPS over aspects of its management of Glacier Bay N.P., the Alaska Wildlife Alliance, along with the group American Wildlands, filed a civil action lawsuit against the NPS in federal district court that

became known as *AWA v. Jensen*.<sup>508</sup> Among their complaints was that the NPS had failed to bar commercial fishing activities in Glacier Bay N.P. The AWA's position was that there was a general statutory ban on commercial fishing in all national parks except those where the activity was specifically allowed by Congress.<sup>509</sup> The NPS, however, was a defendant in the case, because despite considerable earlier talk by the NPS that commercial fishing was illegal in the non-wilderness waters of Glacier Bay N.P., the Department of Justice attorney who represented the NPS argued that the Secretary of the Interior had statutory discretion to allow commercial fishing in non-wilderness waters.<sup>510</sup>

Management through litigation is not the bureaucratic ideal, and the NPS did not officially welcome the lawsuit. Privately, however, many in the NPS welcomed it as a means to accomplish much of what the agency was preparing to do administratively, but with more finality and without the compromises and ill-feeling that a contentious public rulemaking process might engender.

Senator Murkowski called *AWA v. Jensen* "a lawsuit filed by radical groups with no conception of the human realities involved."<sup>511</sup> Various Alaska state legislative leaders, moreover, considered the lawsuit to have "disastrous ramifications for the livelihood and lifestyles of people in northern Southeast Alaska."<sup>512</sup> The State of Alaska, however, chose not to intervene in *AWA v. Jensen*. Among its reasons was the perceived difficulty of succeeding on state claims, and the likelihood that the state's participation would elevate the lawsuit's profile and bring in additional "adverse" parties (such as national environmental groups). A high national profile for the Glacier Bay commercial fishing issue would also diminish the chances of success in the Congress, where the state was concentrating its efforts.<sup>513</sup>

Likely in part to ward off the lawsuit, the NPS at Bartlett Cove had drafted—and the regional office had approved—proposed regulations that would immediately terminate commercial fishing in Glacier Bay N.P. wilderness waters, and provide for a 7-year exemption for commercial fishing in Glacier Bay N.P. non-wilderness waters. The 7-year exemption was justified because past NPS policies had allowed commercial fisheries to develop, and seven years was thought to be enough time for commercial fishermen to make a transition to waters outside the park. (In 1999 NPS had

implemented regulations in the Everglades that allowed fishermen seven years to amortize their equipment.) It was a phase-out period that would result in the termination of all commercial fishing in Glacier Bay N.P., unless planned but unspecified studies during the exemption period arrived at the unlikely conclusion that commercial fishing had little effect on Glacier Bay N.P. resources. In its cursory economic analysis of the draft proposed rule, the NPS naively determined that the economic effects of the rulemaking would be "negligible."<sup>514</sup>

The NPS regulatory process was grinding forward, legislation had been written though not introduced, and now a lawsuit had been thrown into the mix. It seemed that the odds had increased that some sort of change in the management of commercial fishing in Glacier Bay N.P. would occur sooner rather than later. As things were, change was coming from the top down: the voice of Southeast Alaskans, particularly those in the communities near Glacier Bay, had, as yet, been largely left out of the equation. Many in the region wanted to make certain their concerns were known, and to at least help steer the regulatory and legislative efforts.

### **Organized Resistance, More Legislation**

To specifically address the Glacier Bay commercial fishing issue, in October 1990 a number of Southeast Alaska fishermen, fishing groups, and processors, along with the City of Pelican, formed the Allied Fishermen of Southeast Alaska (AFSA). Led by Juneau attorney Bruce Weyhrauch and the Alaska Trollers Association's (ATA) president Dale Kelly, AFSA's primary goal was to "ensure the continued health of the commercial fisheries in GBNP waters by working with all concerned groups to resolve present conflicts." The group sought consensus "with all groups in the region in order to approach Congress with a unified, reasoned amendment to ANILCA."<sup>515</sup> AFSA later determined that Congressional legislation was the only avenue that would ensure the continuation of commercial fishing in Glacier Bay N.P.<sup>516</sup> Among its activities, AFSA lobbied in Washington, DC and intervened in *AWA v. Jensen* on behalf of the NPS. In a 1992 attempt to raise money to fight the Glacier Bay closures, the group invited singer Billy Joel and movie star Kevin Costner to Juneau to do a benefit performance. Joel and Costner were thought to be sympathetic to the plight of commercial fishermen, but neither accepted.<sup>517</sup>

In December 1990, Walter Hickel succeeded Steve Cowper as Alaska's governor. Hickel had been governor during the late 1960s, and had served as Richard Nixon's Secretary of the Interior. He was a strong advocate—if not an ideologue—where state sovereignty was concerned, and he would certainly not cooperate with the NPS to close the fisheries of Glacier Bay.

The Southeast Alaska Conservation Council (SEACC), an established Southeast Alaska environmental group, continued to be involved in the Glacier Bay commercial fishing issue. At that time SEACC represented 13 conservation groups in 11 Southeast Alaska communities. A considerable number of its more than 1,000 members were fishermen. The organization prided itself on its knowledge of Southeast Alaska, its consensus-building skills, and its ability to work in the political arena.<sup>TTT</sup> Though SEACC was primarily focused on the region's forest issues, it had considerable experience with fishing issues, inasmuch as protection of salmon spawning streams was part of its agenda. The organization was neither for nor against commercial activity, but advocated for "conservation and the most appropriate use of lands consistent with their natural value."<sup>518</sup> SEACC believed that there was a place for commercial fishermen in Glacier Bay N.P., and in late 1990, agreed to facilitate an unofficial *ad hoc* Glacier Bay Citizens' Caucus. SEACC's effort was clearly supported by Governor Cowper.<sup>519</sup>

The group met at Hoonah on January 19-20, 1991. It consisted of commercial fishing interests, Native subsistence interests, a back-country concessioner, a charter boat operator, a recreational boater, a representative of the cruise ship industry, one representative from each of the communities of Elfin Cove, Gustavus, Hoonah and Pelican, and a representative of Friends of Glacier Bay.<sup>520</sup> SEACC facilitated, but did not participate in the caucus, and Marvin Jensen was present as an observer and to provide information. The goal of the group was to determine which aspects of the Glacier Bay issue offered the greatest likelihood of local consensus. This consensus could, in turn, become the basis for a legislative proposal.<sup>521</sup> Regarding commercial fishing, the group agreed that outer coast and Icy Strait waters should

remain open to commercial fishing "forever," with the understanding that some waters in Glacier Bay proper, which Jack Hession, of the Sierra Club, termed the "biological heart" of Glacier Bay N.P., would be protected as wilderness.<sup>UUU</sup><sup>522</sup> This compromise remained fundamental in the numerous public meetings on commercial fishing in Glacier Bay that were held over the next seven years, as well as the 1998 legislation that went a long way toward resolving the issue.

Compromise isn't always part of the process in Congress. On May 9, 1991 Senator Murkowski formally introduced S. 1624, "A bill to amend the Alaska National Interest Lands Conservation Act to improve the management of Glacier Bay National Park, and for other purposes." A provision of the proposed legislation would have allowed commercial fisheries that were in existence in Glacier Bay prior to 1989 to continue.<sup>523</sup> The legislation was a long shot that Murkowski hoped would swiftly resolve the issue in favor of commercial fishermen, in part by circumventing the lawsuit filed by the Alaska Wildlife Alliance.

In late summer, Murkowski introduced a refined version of the bill that would have permitted commercial fishing in all non-wilderness waters of Glacier Bay N.P., with the provisions that in Glacier Bay proper the average annual commercial fishing effort, by species, would be maintained at a level no greater than had existed during the years 1981 through 1991, and that only those types of commercial fishing gear in use between 1981 and the date of the legislation's enactment would be allowed.<sup>524</sup>

The response by the NPS to Murkowski's legislation was as one would expect: "NPS cannot support open-ended authorization of consumptive commercial resource extraction. Such presumably impairing activities contradict the Organic Act as interpreted by NPS Management Policies and NPS regulations. In addition, any authorization of such commercial activities in designated wilderness contradicts the Wilderness Act of 1964."<sup>525</sup> At least one official at the Alaska Department of Fish and Game assumed that, should they choose to do so, national environmental organizations such as the Sierra Club could "torpedo" any Glacier Bay legislation they found disagreeable.<sup>526</sup>

<sup>TTT</sup> SEACC was the primary force behind the Tongass Timber Reform Act (1990).

<sup>UUU</sup> Bill Brown, a Gustavus resident and former NPS historian who represented Friends of Glacier Bay at stakeholder meetings in the late 1990s, called Glacier Bay the "very heart and gut" of the park.

Congress took no action on S. 1624 until the following year.

In 1991 the NPS published its first comprehensive service-wide guideline on natural resource management. Commonly referred to simply as NPS-77, the *Natural Resources Management Guideline* was said to provide “the information necessary to design, implement, and evaluate a comprehensive natural resource management program,” and was scheduled for regular formal updates.<sup>527</sup> NPS-77 stated that marine resources represented a “significant component of NPS resource management responsibility,” but acknowledged that “comparatively little is known about marine biota and ecology, physical and chemical processes, and topography.”<sup>vvv 528</sup> The document specifically clarified the agency’s 1978 *Management Policies Handbook* that had simply stated that “Commercial fishing is permitted only where authorized by law,” without stipulating whether the law be federal, state, or local. Under NPS-77, “Commercial fishing will be allowed only where specifically authorized by federal law or treaty right.” The document, however, offered only broad guidance on fisheries management. Relevant to the situation at Glacier Bay was the statement: “Superintendents must not allow harvest to reduce the reproductive potential of the [fish] population or to radically alter its natural (un-fished) age structure.”<sup>529</sup> Unfortunately, the document offered no standard as to exactly what might constitute a “radical” alteration of a fish population’s age structure, which is by no means static, even under natural conditions. ADF&G regulations in Glacier Bay’s king salmon, halibut, Tanner crab and Dungeness crab fisheries prohibit commercial fishermen from keeping fish or crab below a certain size. Certainly the age structure is being modified in each case, though the effect was probably insignificant for halibut and particularly king salmon. These harvesting patterns may have had an effect on Tanner crab, but the steady decrease in the size of legal male Dungeness crab was apparent to fishermen and processors. Increasingly, young crab that had just reached legal size were becoming the largest component of the Dungeness crab harvest. Was this a radical alteration of the population’s age structure?

<sup>vvv</sup> As of this writing, the marine resources management section has not been updated.

Was it due to the intensity of the commercial fishing effort? If it was, the NPS needed a rational basis to act, and a scientific effort to do so would take considerable time.

### The 1991 Proposed Rule

On August 5, 1991 the NPS published its proposed Glacier Bay commercial fishing rule in the *Federal Register*.<sup>530</sup> The rule was characterized by the NPS as an “equitable solution to resolving contradictions among nationwide regulations and service policies, and regionally originated regulations and management plans”<sup>531</sup> It would:

1. Immediately terminate commercial fishing in all wilderness waters of Glacier Bay N.P.;
2. Phase out commercial fishing in non-wilderness waters of Glacier Bay N.P. over a 7-year period. During the 7-year period, studies would be undertaken to determine if “certain levels and/or types of commercial fishing can compatibly co-exist with conserving park resources in an unimpaired state.”<sup>532</sup> Should this be the case, the NPS might consider sanctioning closely-monitored commercial fisheries.

A subsequent NPS news release portrayed the proposed rule as “an exemption to a nationwide ban on commercial fishing.”<sup>533</sup> According to the NPS, the proposed rulemaking would not eliminate commercial fishing, because commercial fishing was already prohibited by statute in designated wilderness and by regulations in other areas.<sup>534</sup> Regarding ongoing wilderness waters fisheries, the Service wrote that “relocation, and its possible economic effect is not a result of these proposed regulations but a result of the areas being within wilderness areas designated [by Congress] in 1980.”<sup>535</sup> The court’s decision in *AWA v. Jensen* would bear this out. The legality of commercial fishing in non-wilderness waters, however, was another matter.

The NPS continued to maintain that the economic effects of its proposed rule would be negligible and asserted that the elimination of commercial fishing from designated wilderness waters “might have some minor economic effects.”<sup>536</sup> The agency also maintained that the 7-year exemption period would have a “positive” economic impact since, rather than

terminating commercial fishing immediately, it accommodated commercial fishermen in making the transition to waters outside Glacier Bay N.P.<sup>537</sup>

The NPS guardedly played up the possible positive value to commercial fishermen of Glacier Bay N.P. as a marine reserve: as a result of the protection of nursery grounds, the NPS wrote, “commercial fisheries adjacent to the Park may improve for some species.”<sup>538</sup> This statement had little relevance in Glacier Bay proper because, of the commercial species under concern, it is a nursery ground only for Dungeness, Tanner and king crab, which in Southeast Alaska generally complete their life cycle close to where they are born.

Though it had come as no surprise to commercial fishing interests, the publication of the proposed rule had added to the urgency of the situation. The NPS at the highest level seemed almost surprised that the “commercial fishing community and their supporters were nearly unanimous in seeing the regulation as a closure rather than an exemption allowing continued fishing.”<sup>539</sup>

Predictably, Senator Murkowski denounced the proposed rule as yet another “interference from an Outside agenda with no understanding or sympathy for realities in Alaska,” and Ron Somerville, deputy commissioner of ADF&G, characterized it as “the National Park Service-against-everybody-else syndrome.”<sup>540</sup> Somerville also threatened legal action against the NPS, saying, “Rather than wait seven years and see the fishing industry die a slow death, we’d rather see something happen now.”<sup>541</sup> Alaska Governor Walter Hickel added that “Alaskans who have made their living and fed their families by commercial and subsistence fishing in Glacier Bay should not be forced out of the park,” and stated his support for Murkowski’s legislation.<sup>542</sup>

In late September, Alaska Congressman Don Young introduced Glacier Bay legislation of his own. H.R. 3418, “A bill to regulate fishing and other maritime activities in certain waters of Alaska, and for other purposes,” was very straightforward. It amended the Magnuson Fishery Conservation and Management Act to give the State of Alaska “jurisdiction and authority” over commercial fishing in Glacier Bay N.P., notwithstanding the wilderness provisions of ANILCA.<sup>543</sup> As written, the legislation was bold but doomed, more ideological sentiment than substance.

His course set, Marvin Jensen reviewed commercial fishing season schedules, consulted with representatives of the fishing industry, and determined that the last two weeks of September in 1991 would best accommodate the greatest public participation for meetings on the proposed rulemaking.<sup>544</sup> Meetings were scheduled in eight Southeast Alaska communities (Elfin Cove, Gustavus, Hoonah, Juneau, Ketchikan, Pelican, Sitka and Tenakee Springs), as well as Anchorage and Seattle. A 90-day comment period was established.

In all, some 323 timely written and oral comments were received. As well as from individuals, comments were received from ten Native organizations, nine conservation organizations, three state agencies and two local governments. Twelve comments were received from commercial fishing organizations that characterized the proposed rule as a “closure action.”<sup>545</sup> Virtually all the individual commercial fishermen who commented stated that their activities had no effect on park resources or values, and a majority stated that visitors to Glacier Bay enjoyed seeing commercial fishing operations. In a summary of significant issues and points raised in the public comment period, the NPS subsistence office in Anchorage charged that commercial fishermen displayed “very little understanding that park resources include marine resources, and virtually no understanding that fish are park resources.”<sup>546</sup>

Most commercial fishermen do understand good fisheries management. To their credit, commercial fishermen in Southeast Alaska are rarely heard to complain when the Alaska Department of Fish and Game (ADF&G) closes or restricts a fishery for conservation purposes. Fishermen viewed the proposed closure of Glacier Bay N.P. to commercial fishing by the NPS, however, as an arbitrary action that, at their expense, would “protect” a resource that, being well-managed by ADF&G, was not in need of protection.

The State of Alaska’s response to the NPS was a 26-page letter by Paul Rusanowski, of the state’s Division of Governmental Coordination. Rusanowski wrote that the state “totally and unequivocally” objected to the proposed regulations, which it called a “blatant attempt to seize the State of Alaska’s regulatory jurisdiction over state lands and waters.” Among the state’s objections were:

- “The background information accompanying the proposed regulations specifically fails to recognize the state’s title to the navigable waters and their beds and, significantly, the state’s jurisdiction over the water columns, shorelands, tidelands, and submerged lands adjacent to the Glacier Bay National Park;”
- The information used to support the proposal was inaccurate and incomplete;
- The proclamations creating Glacier Bay N.M. in 1925 and expanding it in 1939 made no reference to marine waters.

The state also complained that the proposed rulemaking “grossly understate[d] the major social and economic impacts” on Alaska residents and communities, and was thus in violation of the National Environmental Policy Act (NEPA), which required the identification and consideration of socio-economic impacts in a proposed rulemaking.<sup>547</sup>

Similarly, the Citizens Advisory Committee on Federal Areas (CACFA) cited procedural matters in its comments, specifically charging that the NPS did not adhere to the statutory mandates of the Regulatory Flexibility Act, which required a description of the effects of the proposed rule on small entities.<sup>548</sup>

Bruce Weyhrauch, who had helped organize the Allied Fishermen of Southeast Alaska (AFSA) a year earlier, questioned the NPS on what information was used to determine the 7-year exemptive period. (Jensen said later that the NPS, with no precedent to draw from, considered seven years to be “doable and fair.”<sup>549</sup>) Weyhrauch also brought up the possible effects of the rule on fishermen, including those who did not fish in Glacier Bay but who would suffer the ill effects of additional competition when those who fished in Glacier Bay were forced out.<sup>550</sup>

The Wilderness Society was disappointed with the proposed rule. The group considered commercial fishing to be illegal in Glacier Bay N.P., and recommended that the activity be prohibited immediately in wilderness waters and specifically phased out of the rest of the park by the end of 1997.<sup>551</sup>

At least one individual fisherman chose to express his opposition to the proposed rule on a personal level. Superintendent Jensen recalled several in-your-face verbal confrontations with Tom Traibush on the dock at Bartlett Cove.<sup>552</sup>

In Congress, Senator Murkowski continued to promote S. 1624, while in the House, Representative Young did the same with H.R. 3418.

Senator Murkowski’s legislation was discussed and amended at a May 1992 hearing of the Senate Committee on Energy and Natural Resources, Subcommittee on Public Lands, National Parks.<sup>553</sup> As amended, the legislation authorized commercial fishing in the non-wilderness marine waters of Glacier Bay, but only by trolling, long lining or the use of pots or ring nets. Furthermore, the legislation prohibited the annual average commercial fishing effort for each species within non-wilderness marine waters of Glacier Bay proper from exceeding the average annual effort which existed for that species during the period between 1980 through 1991. It also authorized the Secretary of the Interior to develop a comprehensive multi-agency commercial fisheries research and monitoring program. As such, the legislation was approved and referred to the whole Senate.<sup>554</sup>

On June 9, 1992, the House Committee on Merchant Marine and Fisheries, Subcommittee on Fisheries and Wildlife Conservation and the Environment and the Subcommittee on Merchant Marine held a joint hearing on H.R. 3418. After listening to testimony from AFSA, Sealaska, the Sierra Club, NPS Director James Ridenour, and NOAA administrator William Fox, Congressman Young’s legislation was amended to correspond to Senator Murkowski’s S. 1624, and reported out of the full committee in early July.<sup>555</sup> That same month the *Alaska Commercial Fisherman* reported that Alaska’s lone congressman had “successfully negotiated compromise legislation with Park officials.” In exchange for a ban on fishing in wilderness waters, fishermen would be guaranteed unrestricted access to Cross Sound and the outer coast waters of Glacier Bay N.P.<sup>556</sup> There is no evidence of this compromise. In September 1992, a hearing was held by the House Committee on Interior and Insular Affairs, Subcommittee on National Parks and Public Lands that involved seven bills, one of which was H.R. 3418. Dale Kelly, who represented AFSA, was the only fishing industry witness. The Committee on Interior and Insular Affairs took no action on H.R. 3418, which effectively killed the bill.<sup>557</sup>

Though supported by fishing groups and the State of Alaska, the Senate legislation that

would have legalized commercial fishing in Glacier Bay N.P. collapsed in October 1992 over the objections of the Sierra Club, The Wilderness Society, and the National Parks and Conservation Association (NPCA), which had aligned themselves with Democratic Senator Paul Wellstone of Minnesota. A disappointed Senator Murkowski criticized the conservation groups as “enviro-radicals” who had abused the democratic system.<sup>558</sup>

“Enviro-radical” wasn’t an accurate description of these groups. The NPCA, however, was not above distorting the Glacier Bay issue to its own ends. An October 1992 mailing to members stated that “Powerful commercial fishing interests intend to assault the Park’s waters with a veritable armada of trawlers.”<sup>559</sup> The NPCA should have known that trawling had been outlawed in Glacier Bay in 1980. Even if the NPCA actually meant “trollers” where it had written “trawlers,” the troll fleet could hardly have been considered an “armada.” There were “powerful commercial fishing interests” in Alaska, but few had any interest in Glacier Bay, and none were planning any sort of an assault.

In January 1992, President George H. W. Bush effectively prevented the NPS from moving its proposed rule forward. In his State of the Union address (January 28), the president issued a 90-day moratorium on all new federal regulations “that could hinder [economic] growth.”<sup>560</sup> The moratorium was later extended four months.<sup>561</sup> Though the moratorium prevented the NPS from publishing the proposed rule, it did not prevent the agency from continuing to work on it. By the end of April 1992, the rule was in its final form, and the agency expected to publish it “as soon as possible” after the expiration of the regulation moratorium.<sup>562</sup> Looking to put the best face on the proposed rule, the NPS argued that, absent its adoption, a decision by the court on *AWA v. Jensen* might force the Service to enforce regulations that would immediately terminate commercial fishing in Glacier Bay.<sup>563</sup> The regulation moratorium expired on August 27, 1992, but the proposed rule was not published.

The NPS dearly wanted to publish the proposed rule, but found itself in a quandary because doing so would increase support for legislation by Alaska’s congressional delegation that the agency feared would “open the entire Park (except Wilderness waters) to a level of

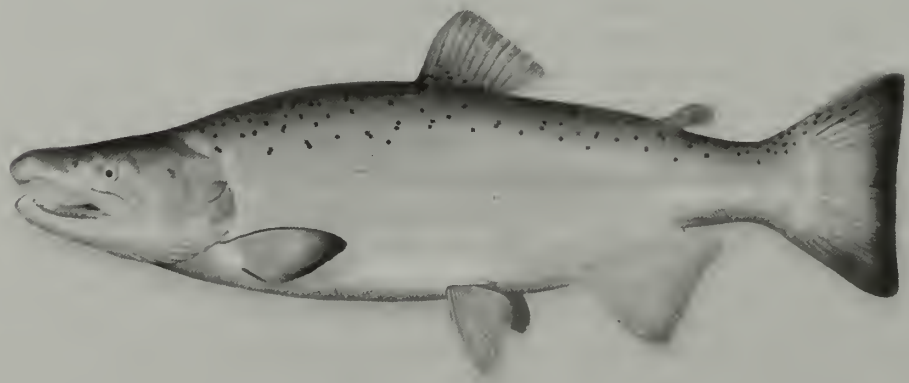
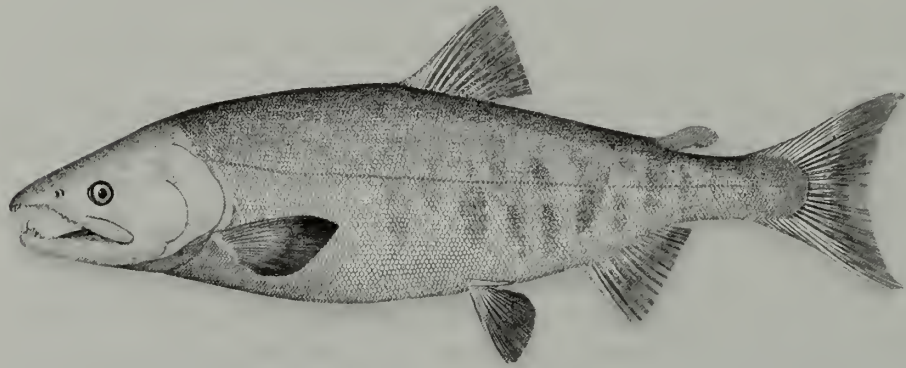
fishing that could well be detrimental to the integrity of the Park.”<sup>564</sup> It’s conceivable also that the DOI backed off because the Bush administration didn’t want to push a controversial rule so close to a presidential election.<sup>www 565</sup> Additionally, there was a report that negotiations at some point in 1992 between the DOI, State of Alaska, and Alaska’s Congressional delegation had nearly arrived at a legislative compromise, but the agreement was ultimately “quashed” by the Hickel administration.<sup>566</sup> Speculation and the record aside, by the end of 1992 the proposed rule had gone nowhere, and it was apparent that a final decision would be left to President-elect Bill Clinton’s Secretary of the Interior.<sup>567</sup>

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<sup>www</sup> The DOI returned the controversial proposed rule to the NPS on January 19, 1993. It was never resurrected.

# Fish Report No. 6:

King Salmon—Halibut—Dungeness Crab—Tanner Crab—Pelican Cold Storage Changes hands (again)—Cell Phones—Sinking of *Westerly*—Sinking of *Oaxaca*





## King Salmon

Many who troll in Southeast Alaska are based in Seattle. Their pattern is to bring their boats north in late spring, then return to Seattle at the end of the summer season. As king salmon became more valuable, Seattle-based trollers increasingly stayed on to fish the first week or so of the winter season, which was usually fairly productive. The big effort at the beginning of the season cut significantly into the winter quota and diminished opportunities for Alaskans over the winter. To make the fishery more “Alaskan friendly,” ADF&G in 1992 rescheduled the opening of the winter troll king salmon season from October 1 to October 11, reasoning that the three-week interim between the end of the summer season and the beginning of the winter season was longer than most Seattle-based fishermen wanted to wait. Unfortunately for Glacier Bay’s fishermen, the first part of October is when king salmon were usually most abundant, and the catch of king salmon from Glacier Bay declined after the October 11 regulation was put into effect.

## Halibut

A great improvement occurred in Alaska’s halibut industry in 1995 when the National Marine Fisheries Service (NMFS) implemented an individual transferable quota share program (“ITQ,” but more commonly referred to as “individual fisherman’s quota,” or “IFQ”).<sup>xxx</sup> Based on past production, some 5,000 individual fishermen (captains only) were awarded quota shares in the halibut fishery. Each quota share represented a very small percentage of the halibut quota in a given management area, which varies from year to year depending on the International Pacific Halibut Commission’s projected abundance of halibut. To ensure that large vessels did not dominate the fishery and that the composition of the halibut fleet remained approximately the same, the pool of quota shares was divided by vessel size (“class”) (see Figure 30). Halibut quota shares are transferable. Fishermen can purchase shares from others, or sell out of the business. (Purchasing IFQs is a little like participating in an agricultural commodities future market: their value can fluctuate depending on market conditions and the abundance of halibut.) In theory, quota shares migrate to the most efficient

operations. To prevent a relatively small group from ultimately owning an inordinate percentage of the quota shares, limitations were placed on the number an individual could own. As of this writing, consolidation has reduced the number of quota share holders to fewer than 4,000. Unfortunately, the high cost of purchasing IFQs is a substantial barrier to fishermen who would like to enter the fishery.

With the introduction of the IFQ program, the short, hectic, “derby days” were over. The halibut season opened March 15 and closed on November 15.<sup>yyy</sup> Fishermen could choose to fish at the time it was most efficient or convenient for them. If the weather was bad and conditions dangerous, they could wait for the situation to improve. They could fish when they believed the market would be best and their fish most valuable, or before or after another fishery in which they were involved. There was no need to even own a boat. An owner of IFQs could contract to catch his fish on any properly licensed boat of the same or smaller class. The owner of the IFQs had to be aboard the boat, but some just showed up with their IFQ card, coffee cup, and something to read, with no intention of working on deck.

Overall, halibut fishing operations became more professional. Because there was no desperate hurry to catch or deliver fish, halibut were handled better, and overall quality improved (see Figure 31). Processors benefited because they had a relatively steady supply of halibut rather than periodic gluts that often overwhelmed processing capabilities. Consumers benefited from the higher quality of halibut as well as the fact that the fish were available almost year-round. The improved quality of halibut and its increased availability on the fresh market caused the price of halibut to rise steadily, which was something of a windfall for the industry, particularly fishermen.

In implementing the IFQ program the federal government had privatized the rights to a common property resource. It had “created” an item of monetary value where none had previously existed, and distributed it to fishermen whom it deemed eligible. There was an element of unfairness to it all, particularly to crewmen who had a long history of fishing halibut. Nevertheless, out of respect for the resource, and in the name of efficiency,

<sup>xxx</sup> The Canadians had instituted a similar program in 1991.

<sup>yyy</sup> The season was later extended to begin on March 1 and end on November 30. There is talk of a year-round fishery, which could potentially target halibut on their spawning grounds.



Figure 30: F/V *Zapatista*, rigged for halibut fishing. A number of Glacier Bay fishermen fished from small vessels. (NPS collection, Bartlett Cove, Alaska)

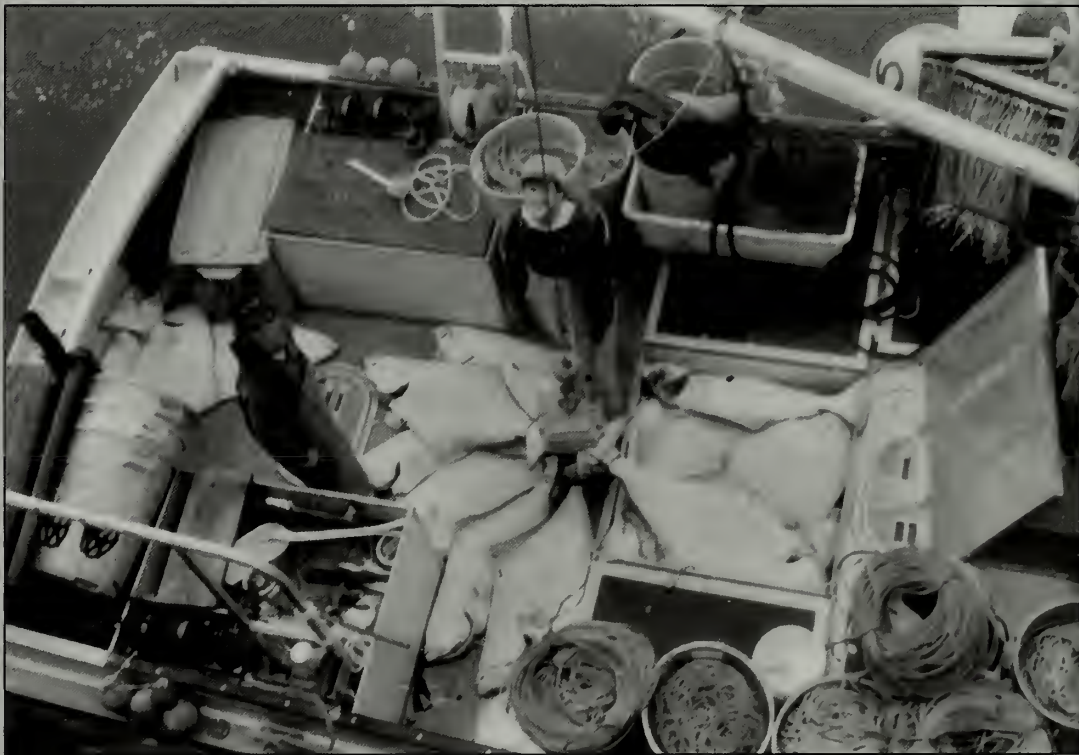


Figure 31: Gustavus fishermen Bruce Smith and Matt Metcalf aboard Smith's vessel *No-Seeum* with load of high quality halibut. (courtesy James Mackovjak)

providing a high-quality product to the American consumer, and keeping the halibut fishery viable, the IFQ program was a huge improvement over the previous harvesting system.

The impact of the halibut IFQ program on Glacier Bay was substantial. No longer was the Bay crowded for a few days each year with halibut boats, some with crews almost frantic

to catch as many halibut as they could as fast as they could. Under the IFQ program, fishermen were free to choose where they fished. Fishermen who wanted to fish in Glacier Bay could do so, but many opted for historically more productive grounds in Icy Strait and Cross Sound. For the NPS the fishery had the potential to be smaller and conflict less with visitors.

The reduction in the number of halibut fishermen also meant that any NPS effort to reduce or eliminate commercial fishing in Glacier Bay would affect fewer individuals. Furthermore, the IFQ program undercut the argument that access to Glacier Bay was needed by halibut fishermen due to weather-related safety considerations. As Chief Ranger Randy King said in 1995, “Fishers can [now] pick their weather and fish elsewhere.”<sup>568</sup>

### Dungeness Crab

The Dungeness crab fishing industry in Glacier Bay did not stand still while the NPS worked to end commercial fishing. It continued to grow. In 1990, Matt Metcalf, who came to Alaska in 1986 to work at Glacier Bay Lodge and had been fishing Dungeness crab and halibut with Tom Traibush since 1988, leased the vessel *Bogart* from Traibush, purchased 150 crab pots, and started fishing in the Beardslee Islands. Metcalf knew that the NPS wanted to close Glacier Bay to commercial fishing, but the effort had been unsuccessful for so long that he figured there was a good possibility it might never happen.<sup>569</sup>

In 1992 Tom Traibush purchased the 45-foot *Defiance II*, a Chesapeake Bay crab boat powered by a 650-horsepower diesel engine, on the East Coast and had it trucked to Seattle and then shipped by barge to Juneau. The *Defiance II* could carry 150 crab pots, but it burned a lot of fuel: 10 gallons per hour at 10 knots. It was not equipped with a live tank. Traibush leased and eventually sold the *Nellie Brown* to Matt Metcalf, who, in turn, sold the *Bogart* to Dan Foley, whose *Margaret Mary* was falling into disrepair. Charlie Clements bought the 38-foot *Ruby Lynn*, a fiberglass-hulled boat designed to seine salmon, in 1995. Part of the reason for Clements’ purchase was that, should it become necessary, the vessel was better suited to fishing outside Glacier Bay.

There was a recognized need by state fisheries managers to stem the rapid growth of Southeast Alaska’s Dungeness crab fleet, and in 1991 Alaska’s legislature authorized the establishment of a four-year moratorium on new entrants into the fishery.<sup>570</sup> A limited entry scheme was the goal, but the situation warranted a different type than had been used in the salmon fisheries. At issue was the range in the number of pots fished by individual permit holders. Although ADF&G regulations at that time limited individual permit holders to a

maximum of 300 pots, many fished far fewer. It was thought that the imposition of a simple limited entry program might actually cause the fishing effort to increase if fishermen chose to increase the number of pots they fished. During the moratorium, the Commercial Fisheries Entry Commission (CFEC) studied the matter and determined suitable qualifications for the issuance of permits. In 1995, the CFEC imposed a limited entry program on the Dungeness crab fishery. It limited the number of pots that an individual permit holder could fish based on past participation in the fishery. The allowed number ranged from 75 to 300, in 75-pot increments. At least one Dungeness crab fisherman in Glacier Bay was affected by the pot limitation. Matt Metcalf, who had recently been fishing 300 pots, was limited to 225.

The size of the local Dungeness crab fleet in Glacier Bay remained stable except for the 1997 addition of the *Wavelength*, a 24-foot light aluminum gasoline-powered skiff that was decked over and fitted with a small cabin. The *Wavelength* belonged to Naomi Sundberg, wife of Tom Traibush. Sundberg had two sons who fished with her and Traibush. As the boys grew older there wasn’t enough to keep them busy on one boat. The *Wavelength* was a vessel her sons could work on and eventually operate. It was faster than the *Defiance II*, and it was used some to explore different grounds inside and outside Glacier Bay. Sundberg was licensed to fish 150 pots.

ADF&G crab biologist Tim Koeneman determined that harvest levels of Dungeness crab in Southeast Alaska during the 1980s were maintained only because the fleet constantly moved to new areas as local populations were depleted.<sup>571</sup> As additional fishermen entered the fishery the grounds became saturated. There were simply no new grounds to move to. Fishermen staked—“homesteaded”—an area and defended it. If a newcomer moved in and set a string of ten pots, he might return to find that his pots hadn’t caught many crab because they were now sandwiched between twenty of the homesteader’s pots. Glacier Bay’s Beardslee Islands Dungeness crab fishermen acquired a reputation for cooperating to keep newcomers out.

This intense and unrelenting fishing pressure on Dungeness crab in Glacier Bay took its toll on crab. Dungeness crab were being caught as soon as they were of legal size. In fact, before reaching legal size, most crab had been caught and released more than once. In the parlance of

fisheries managers, this was a “recruit fishery.” This issue wasn’t so much a matter of quantity as it was of quality. Younger crab are generally smaller crab, and the average size of crab delivered from Glacier Bay was getting smaller, down to about 2.15 pounds from about 2.4 pounds a decade earlier. ADF&G’s “3-S” (sex, size, and season) management program was structured to provide the maximum sustained yield of crab. The size of those crab was not a consideration. Overall, though still very good, Dungeness crab from Glacier Bay lost some of their marketability. Such was the price of competition for a limited resource on finite grounds.

### **Tanner Crab**

Japanese demand for Tanner crab pushed the price up to record highs during the 1990s. As well, there was—at least for some years—an abundance of the species in Icy Strait, particularly in the vicinity of Pleasant Island.<sup>zzz</sup> Fishing was competitive and intense. With seasons less than two weeks long, it was very important for fishermen to keep their gear continuously productive. At the season’s opening, fishermen tended to set their gear in Icy Strait, then move into Glacier Bay as catch rates declined.

Hoonah Cold Storage and Pelican Cold Storage froze Tanner crab sections for the Japanese market. In Gustavus, Icy Passage Fish for several years cooked and froze Tanner crab sections for the Japanese market, while Point Adolphus Seafoods shipped live Tanner crab to Asian markets on the U.S. West Coast as well as to Japan.

### **Pelican Cold Storage Changes Hands (again)**

In 1996 Kake Tribal Corp. purchased Pelican Cold Storage from Kaioh Suisan. Kake Tribal is one of more than 200 for-profit Native corporations established by the Alaska Native Claims Settlement Act in 1971. The corporation also processed seafood at its cold storage plant in Kake. The purchase of Pelican Cold Storage would prove highly troublesome financially.

### **The Impact of Cell Phones on Fish Marketing**

Fresh king salmon from Glacier Bay, particularly during the winter season (presently October 11 through April 15), are mostly sold to distributors on the West Coast, including

Anchorage. There are surprisingly few customers with integrity who regularly purchase winter king salmon from Southeast Alaska, and they tend to be those that have a high-end clientele. Their names are no secret to anyone who has watched fish boxes being loaded aboard an airplane: the customer’s name is written large on every box.

Until cell phones became available, fishing vessels had very limited ability to communicate with anyone except by marine radio. The frequencies used are public, so there is no privacy. Being very secretive about what they catch and where they catch it, communications among fishermen are often done in prearranged code. The same is true of conversations between fishermen and processors.

The widespread use of cell phones by fishermen changed that, and added a new dimension to marketing fish by giving fishermen an element of independence. They could bypass processors and efficiently market their fish directly while still fishing. Many customers were very happy to buy direct. For a fisherman, cutting processors out of the action didn’t take much: a cell phone, a license from the state, and some fish boxes. Certified scales to weigh fish were available at airports. The most organized fishermen tended to have the highest quality fish (and often the most fish), and they tended to do well at marketing their own production. Fishermen are still ultimately dependent upon processors for ice, but they often stock up before processors close down for winter. When available, snow is sometimes used as a substitute for ice (icebergs are pretty scarce these days). With only one very small processor (Pep’s Packing) remaining in Gustavus, the ability of fishermen to market their own fish is very valuable.

### **Sinking of *Westerly***

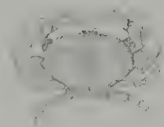
On February 15, 1994, the steel-hulled, 72-foot Petersburg-based *Westerly*, which was preparing to set Tanner crab gear, reported that it was in danger of sinking northeast of Strawberry Island. There were gale-force winds from the north at the time. The three individuals aboard donned immersion suits and abandoned the vessel. They were almost immediately rescued by the vessel *Northwyn*, which was also fishing Tanner crab. The *Westerly* stayed afloat for approximately one hour,

<sup>zzz</sup> Tanner crab caught in the vicinity of Pleasant Island are considered by many to be of the highest quality available in southeast Alaska.

than sank east of Strawberry Island. Despite the severe weather, the cause of the sinking was not weather-related, but due to the sudden failure of a bulkhead in the main hold, which was filled with seawater to hold live crab. No attempt was made to salvage the *Westerly*.<sup>572</sup>

### Sinking of *Oaxaca*

On February 15, 1998—four years to the day after the *Westerly* sank—the wooden-hulled, 36-foot, Gustavus-based *Oaxaca*, which was ring-netting for Tanner crab, struck a reef near the south entrance to Hutchins Bay (Beardslee Islands area) and began to sink.<sup>AAAA</sup> A distress call was issued, and the two individuals aboard began to don immersion suits. They were not long after taken aboard the *Cape Fairweather*, a commercial fishing vessel that responded to their distress call. Efforts were made to keep the *Oaxaca* afloat, but they were unsuccessful and the vessel sank in shallow water. The *Oaxaca* was later refloated and towed to Gustavus, where usable items were salvaged before the hull was burned.<sup>573</sup>



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<sup>AAAA</sup> In 1994 and 1998, February 15 was the opening day of the Tanner crab season.

## Chapter 8: Steering Toward the “Lesser of Two Evils”

**Bill Clinton, Bruce Babbitt, and George Frampton**

Hopes were high in the environmental community in 1993. Democrats controlled the White House and both chambers of Congress, and President Clinton had appointed Bruce Babbitt as his Secretary of the Interior. A former governor of Arizona and past president of the League of Conservation Voters, Babbitt was a committed conservationist and was sensitive to Native concerns. He was assisted by George Frampton, who gave up the presidency of The Wilderness Society to become Assistant Secretary of the Interior for Fish and Wildlife and Parks. A veteran of Alaska conservation battles, Frampton once provocatively said that “We ought to make the whole state an historical park so people can...see how folks thought in the 19th Century,” in reference to several prevailing Alaskan attitudes about resource development.<sup>574</sup>

Only six days after Bill Clinton’s inauguration, Representative Don Young introduced Glacier Bay legislation in the new Congress. H.R. 704 was identical to H.R. 3418, which had languished in the previous Congress. Several days later Senator Murkowski introduced S. 291, which was identical to his last version of S. 1624.<sup>575</sup> So far as commercial fishing was concerned, the bills were essentially the same. Likewise, their fates were essentially the same. Before winter had ended, Senator Murkowski’s legislation had died without a hearing in the Senate Committee on Natural Resources. Representative Young’s legislation lasted until mid-summer. It received a single hearing in late April in the House Committee on Merchant Marine and Fisheries’ Subcommittee on Fisheries Management. Witness participation was limited to the NPS (opposed), State of Alaska (in favor), The Wilderness Society (opposed), and Sealaska, Southeast Alaska’s regional Native corporation (in favor).<sup>576</sup>

Roger Kennedy, director of the NPS, provided the committee a comprehensive summary of his agency’s view of commercial fishing in Glacier Bay National Park:

The National Park Service (NPS) Organic Act and its supplemental basic legislation require the protection of all forms of wildlife, includ-

ing fish, in an unimpaired condition, and limit the authorization of activities to those which will not derogate park purposes and values. NPS regulations prohibit commercial fishing on the basis that the commercial removal of fish is contrary to park purposes and values, including the purpose of conserving those fish in an unimpaired state. There is no doubt that the commercial removal of several million pounds of fish annually is adversely affecting that park resource—the fish—which the NPS has a mandated obligation to protect. We also believe that the commercial removal of these large quantities of fish, some of them in concentrated locations, has a secondary effect on unimpaired park ecosystems and the natural composure of biodiversity on a local level, which are also park values. Fish are both predators and prey of other species. Large scale commercial removal of fish affects the food chain, the ecosystem, and ultimately, attempted maintenance of unaffected biodiversity.<sup>577</sup>

Representative Young’s legislation was reported by the Committee on Merchant Marine and Fisheries to the full house, which took no action, effectively killing the bill.

It would be 1997 before Alaska’s congressional delegation would again introduce legislation to perpetuate commercial fishing in Glacier Bay. By this time most of the commercial fishing industry recognized that it was Senator Stevens, not Representative Young or Senator Murkowski, who stood the best chance of favorably resolving the Glacier Bay commercial fishing issue.

Under the new administration the NPS argued for immediate publication of a final rule in place of the 1991 proposed rule, but the DOI declined to do so because George Frampton “wanted to study this difficult issue thoroughly before recommending regula-



tions shaped in the last Administration.”<sup>578</sup> Changes to the 1991 rule were deemed necessary, and the NPS in Alaska and the DOI in Washington, DC each quietly contemplated what alterations needed to be made. The changes both involved only non-wilderness waters; commercial fishing in wilderness waters in each case would be immediately terminated. In contrast to the seven-year phase out under the 1991 proposed rule, the new “proposal” that emanated in August 1993 from the NPS in Alaska, where public pressure to continue commercial fishing in Glacier Bay was high, reflected a tacit acknowledgment that the NPS would have to soften its approach if its proposal was to stand a chance of being acceptable regionally. It allowed for a ten-year phase out period in Glacier Bay N.P., and it raised the possibility of fisheries being permanent, pending an NPS proposed study of the effect of the commercial catch on park resources to learn “what, if any, types and levels of harvest should continue.”<sup>579</sup>

Action on any version of the proposed rule was forestalled, however, when, at the request of the State of Alaska, Secretary Babbitt agreed to refrain from issuing a final rule while the possibility of resolving the issue through legislation was discussed with state and Congressional staff.<sup>580</sup> An informal “Glacier Bay Working Group,” consisting of representatives of AFSA, SEACC, Sealaska, and ADF&G, was formed to develop an Alaska consensus position and draft language for a bill that would advance that consensus.<sup>581</sup> The DOI/NPS effort to resolve the Glacier Bay issue had moved from the regulatory to the political realm.

Among the consensus points reached by the working group were that the average annual commercial fishing effort in Glacier Bay N.P., by species, should be maintained at a level no greater than the average that had existed during the years 1981 through 1991 (this was virtually identical to the modified Glacier Bay legislation that Senator Murkowski introduced in 1991), and that commercial (as well as subsistence) fishing should continue “unless unbiased studies or other substantial information demonstrate that Park resources or values are jeopardized or specific stocks are mismanaged.” The group thought the wilderness issue could be dealt with through legislation that specifically permitted commercial fishing in Glacier Bay N.P.’s wilderness waters or through bound-

ary modifications that would exclude portions of areas such as the Beardslee Islands and Hugh Miller Inlet from wilderness.<sup>582</sup>

In 1993, Bruce Babbitt scheduled a summer trip to Alaska, part of which was to learn more about the state, and part of which was a family vacation that included an August kayaking trip in Glacier Bay. In an attempt to delay action on Senator Murkowski’s Glacier Bay legislation (S. 291), Babbitt portrayed his Alaska trip as an opportunity to “collect first-hand knowledge on numerous departmental issues, including Glacier Bay.” He said that there were “many ambiguities” surrounding fishing in the park, and that he himself had many questions. Babbitt also professed his “desire to investigate the wisdom” of the proposed regulations and to explore potential solutions to the commercial fishing issue.<sup>583</sup>

Word of Babbitt’s planned visit reached the Glacier Bay Working Group, which was well aware of the fact that any meaningful consensus on the Glacier Bay issue would need to include that of the national environmental groups to which Babbitt had close ties. Although the group did not have the opportunity to meet with Babbitt during his Alaska visit, a letter was later written asking him to help build consensus at the national level.<sup>584</sup>

Coinciding with Babbitt’s visit to Glacier Bay, ADF&G published a report titled “The Fisheries of Glacier Bay National Park and Preserve,” pointing out that “In the 33 years since statehood, Alaska has effectively managed the fishery resources so they are as abundant and healthy as ever,” and that “Fish and shellfish populations are healthy and abundant in and around Glacier Bay, following three decades of careful state management, coordinated with federal and international management of the fishery resource.”<sup>585</sup> Several months earlier, Jeffery Koenigs, of ADF&G, wrote of the state’s position on commercial fishing in Glacier Bay:

The State of Alaska simply and firmly believes that traditional levels and types of fisheries should be allowed to continue in Glacier Bay and other waters adjacent to the national park. These fisheries have proven to be compatible with the park’s natural values throughout and before its entire existence. Communities have grown up

depending upon the livelihood provided by these traditional fisheries. This history should be celebrated rather than prohibited.<sup>586</sup>

For its part, the NPS at Glacier Bay prepared to lobby Babbitt on the advantages of Glacier Bay as a marine reserve and the need for studies of the ecosystem effects of commercial fishing in the park.<sup>587</sup> The strategy of the agency's hierarchy beyond the park level, however, favored the ultimate termination of commercial fishing in Glacier Bay. Upper echelon NPS officials believed that the agency's regulatory authority was sufficient to achieve that goal, and that a legislative approach should be employed only to introduce legislation to counter that which might be introduced by Alaska's congressional delegation.<sup>588</sup>

Essentially all of Babbitt's time at Glacier Bay was spent vacationing with his family. Glacier Bay Superintendent Marvin Jensen took the opportunity to travel with Babbitt and his family on the local charter boat that transported them to Muir Inlet. While en route, Jensen stated to Babbitt his strong interest in resolving the commercial fishing issue. But Babbitt, he recalled, wasn't "much interested in engaging any issues," and mostly just listened. Likewise, his kayaking guide, who had some knowledge of Glacier Bay's fisheries, did not recall any discussions about commercial fishing in Glacier Bay.<sup>589</sup>

At any rate, Bruce Babbitt was skeptical of the Alaska-generated working group proposal. He considered commercial fishing to be an illegal activity, and the proposal would, in effect, extend it for ten years. It was, in his mind, "clearly in contravention of the law." Despite all the work that had been done, Babbitt even pondered the possibility of not really dealing with the issue, of simply announcing a policy of non-enforcement of the existing law. Instead, however, he decided that legislation was the "way to go," and suggested that the department had better start working with a couple of NPS-friendly congressmen.<sup>590</sup> About two months after his return from Alaska, Babbitt met with Alaska's Congressional delegation to discuss possible compromises that might settle the issue.<sup>591</sup> As the year 1993 was coming to a close, the DOI was still on the legislation track, with George Frampton continuing the legislative

effort, his department convinced that legislation was the "desired long-term solution to the Glacier Bay fishing issues."<sup>592</sup> The department was not, however, planning to work with NPS-friendly congressmen. Instead, it would work with Senator Murkowski, who had worked hard to halt the NPS's effort to close Glacier Bay to commercial fishing and was not inclined to compromise.<sup>593</sup> The reality was that any legislation proposed by the NPS that was not satisfactory to Alaska's congressional delegation, particularly to Senator Stevens, would face a difficult future in Congress.

On the suggestion of John Katz, the Washington, DC representative of the Alaska's governor's office, a core group consisting of Alaska's Congressional delegation (represented by Senator Murkowski's office), DOI/NPS, and Alaska's governor's office was formed to arrive at a consensus on which mutually acceptable legislation could be based. Once consensus was reached, the group would be expanded outward to include fishermen, Native interests, the environmental community, and key congressional players.<sup>594</sup> At Katz's request, the DOI continued to refrain from issuing the proposed rule, but kept it, as Jensen wrote, "in our hip pocket."<sup>595</sup> With Frampton's office representing DOI/NPS, the group negotiated privately.

The DOI/NPS generated a proposal for the negotiations. The fact that it was generated in Washington, DC may have affected its tone: Clinton administration officials in the nation's capital—many of them already preservation-oriented—were more likely to hear from, and be sympathetic with, representatives of national conservation organizations than concerned fishermen. Significant in this proposal was that Glacier Bay proper was to be treated differently than the park's outer waters. For Glacier Bay proper as well as other bays and inlets, the DOI/NPS proposal favored a shorter phase-out period than it had in the 1991 proposed rule: three years. Commercial fishing in the outside waters and those of Icy Strait and Cross Sound would be phased out over ten years.<sup>596</sup>

In contrast to its public plans that would terminate commercial fishing in the outer waters after 10 years, DOI/NPS was willing in the discussions with the state and Senator Murkowski's office to allow commercial fishing to continue in perpetuity in the outer waters of Glacier Bay N.P., contin-



gent upon a “demonstration of no adverse impact.”<sup>597</sup> It may have been coincidence that the previous summer, Chip Dennerlein of the National and Parks Conservation Association had told Randy King that the long-term goal of the national conservation groups was to close at least Glacier Bay proper to commercial fishing.<sup>598</sup> Molly Ross, a solicitor at the Department of the Interior who was involved in Glacier Bay issues for many years, later said that Washington, DC-based discussions on treating the park’s outer waters differently than Glacier Bay proper were first held in 1992.<sup>599</sup>

The self-named Glacier Bay Task Force met on January 24, 1994 and reviewed a DOI outline for commercial fishing legislation. General agreement was reached on two important items: (1) the wilderness waters of Glacier Bay could be closed immediately to commercial fishing, and (2) fishing could be phased out of Glacier Bay proper over a three-year period with the provision that DOI/NPS agree to meet with interest groups to hear concerns about the issue. The sticking point was the future of commercial fishing in Glacier Bay N.P.’s outer waters. The state and Alaska’s congressional delegation wanted a 10-year scientific study to determine if the outside waters resource was being harmed by commercial fishing, with the provision that during the study only temporary conservation-based restrictions could be placed on the fisheries.

A DOI draft outline for legislation promoted the idea of Glacier Bay as the first “protected marine system” on the Pacific Coast and a reserve that would provide “unparalleled opportunities” for research. The perennial NPS commercial fish/sport fish contradiction was front and center to the commercial fishermen: commercial fishing would be terminated, yet sport fishing would be allowed to continue.<sup>600</sup>

The second meeting of the Glacier Bay Task Force was held two weeks later. At this meeting the State of Alaska was less accommodating. It was supposed to provide its own outline for legislation, but instead it introduced some incomplete legal research that claimed the NPS did not have jurisdiction over the waters of Glacier Bay N.P. This legal/ideological approach sowed doubt in the DOI and NPS that the Hickel administration would be able to provide an acceptable commercial fishing proposal.<sup>601</sup>

In early March, however, John Katz called Molly Ross at DOI to inform her that the state and Senator Murkowski’s office wanted to come back to the bargaining table, to make another attempt at resolving the Glacier Bay issue.<sup>602</sup> Late the following month, the state provided a proposal that would address the Glacier Bay commercial fishing issue through legislation and cooperative agreements with the NPS. The proposal, which was developed with the close cooperation of Senator Murkowski’s office, reiterated the state’s claim to ownership of Glacier Bay’s submerged lands, and presented two options. Option A was based on a cooperative management agreement similar to that contained in the legislation that created Channel Islands National Park. As the Channel Islands N.P. legislation guaranteed the State of California’s rights and jurisdiction over submerged lands and waters within the Channel Islands N.P.’s boundaries as established by a 1978 Supreme Court ruling, this legislation would guarantee the State of Alaska’s jurisdiction over submerged lands and waters within Glacier Bay N.P.<sup>603</sup> From the DOI’s perspective, Option A was a non-starter. Option B involved the legislative implementation of the Glacier Bay Working Group’s consensus points. In this option, the state tacitly agreed to the immediate closure of wilderness waters in Glacier Bay N.P. to commercial fishing. In Glacier Bay proper, the state recognized “the legitimate concerns of the Interior Department regarding the potential for conflict that exists between commercial fishing ... and visitor enjoyment of the Park and other Park resources.” To minimize conflicts in Glacier Bay proper, the state was willing, under its management authority, to limit “the level or effort of catch, methods and means, and the seasons in which commercial fishing can take place.” Regarding the park’s outer coast, the state maintained that commercial fishing there did not conflict with visitor uses and that the stocks harvested were migratory species that did not originate in the park. No restrictions on commercial fishing would be necessary, but the NPS should cooperate with the state in conducting studies to ensure the continued health of the fisheries.<sup>604</sup> The state’s proposal did not address the effects of commercial fishing on Glacier Bay N.P.’s ecosystem. This was an important consideration, given the state’s proclivity for managing fisheries for maximum sustained yield.

<sup>597</sup> As used in this work, “outer waters” refers to all marine waters in the park outside Glacier Bay proper.

The NPS was looking for something more, something along the lines of its 1991 proposed rule, and was in no way willing to agree that the state had jurisdiction over Glacier Bay's marine waters.

George Frampton took the time to visit both Glacier Bay and Hoonah during the summer of 1994.<sup>605</sup> At Hoonah he was treated to a Native dancing program and an array of local food. Frampton did not meet with Albert Dick, Hoonah's mayor, but Dick later penned him a letter stating that the closure of Glacier Bay to commercial fishing would have a "devastating" effect on Hoonah. Dick added that "our people have done a good job in protecting the natural resources for the future of Glacier Bay," and asked Frampton's help in ensuring that the people of Hoonah "continue our unique lifestyle, and allow us the ability to continue to make a living from the bountiful waters of Glacier Bay."<sup>606</sup> Frampton came away better understanding the issue.

To Tom Traibush, the end of his Dungeness crabbing venture in Glacier Bay seemed near. He thought the NPS might close the park's wilderness waters to commercial fishing as early as that fall, and he later said that Superintendent Jensen told him that there would be no Dungeness crab fishing in Glacier Bay in 1995.<sup>607</sup> Though they couldn't have known it at the time, Traibush was too pessimistic and Jensen was too optimistic. Fishing in the Beardslees would continue for half a decade.

A near agreement on legislation to settle the Glacier Bay issue negotiated by Frampton between the DOI, the State of Alaska, and Senator Murkowski's office collapsed late in 1994 when the Hickel administration pulled out of negotiations.<sup>608</sup> The agreement would have involved a 5-year phase-out of commercial fishing in Glacier Bay proper in exchange for allowing commercial fishing to continue in perpetuity in the outer waters of the park. This near miss on a relatively short phase-out left Frampton less receptive to longer time frames later suggested by park staff.<sup>609</sup> Governor Hickel was succeeded that December by Democrat Tony Knowles, whose administration was considered to be more open to negotiation than his predecessor.

While negotiating with the state and Alaska's congressional delegation, the NPS was also waiting for the federal court to conclude its deliberations on *AWA v. Jensen*, which had

been filed in August 1990. On February 28, 1994 the court ruled 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 (see Figure 32)."<sup>610</sup> Until this ruling the NPS had continued to profess that commercial fishing was illegal in the non-wilderness waters of Glacier Bay N.P. The court had determined otherwise, that while commercial fishing was indeed illegal in wilderness waters, the NPS had the authority to prohibit or permit the activity in the non-wilderness waters of Glacier Bay. Though the NPS seemed to have had the authority to keep the non-wilderness waters of Glacier Bay open to commercial fishing, to do so was against park values and purposes. The Alaska Wildlife Alliance, for its part, was not satisfied with the ruling, and appealed it to the Ninth Circuit Court of Appeals.

The people of Hoonah have had a long history in Glacier Bay, both in aboriginal and modern times. The community stood to lose a lot if Glacier Bay N.P. was closed to commercial fishing. Particularly where Senator Murkowski was concerned, the Hoonah Indian Association had been overshadowed in Glacier Bay issues by the Sealaska Corp. and its CEO, Robert Loescher. On April 15, 1994 the HIA passed a resolution regarding Glacier Bay that pointed out the association's status as a federally recognized tribe whose ancestral homeland was Glacier Bay. The resolution noted as well that commercial fishing was a "customary and traditional use" of Glacier Bay, and it requested that the federal government develop and implement a plan that would "promote the survival of [the Hoonah Tlingit] culture and way of life and insure continued customary, traditional and historical use of resources" within Glacier Bay N.P.<sup>611</sup> A second resolution passed the same day called for the federal government to meet with the HIA to develop a plan that would provide for the management of Glacier Bay by the association.<sup>612</sup> The requests were not of the sort that could be readily accommodated by the NPS.

In spite of the ongoing efforts, it became progressively clear to Jensen that the regulations were not likely to be published.<sup>613</sup> The 1991 proposed rule, however, remained alive in DOI, in part revised by Molly Ross, a hard-working solicitor in the Secretary of



Figure 32: A portion of the Beardslee Islands wilderness area (courtesy James Mackovjak)

the Interior's office who had been involved in Glacier Bay issues since the late 1970s and had later represented the DOI in Glacier Bay stakeholder meetings.<sup>CCCC 614</sup> Ross wanted to move the rule forward, but the DOI and the NPS were conflicted over whether it should be published as final or as proposed. Apparently the DOI had made a commitment to the State and Alaska's congressional delegation to publish the revised regulations as proposed, but publishing them as final had the advantage of avoiding "another provocative (extra) round of hearings (with no anticipated change in outcome resulting from additional public comment)." A downside of publishing the rules as final was the increased likelihood of provoking legislation by Alaska's congressional delegation.<sup>615</sup>

#### **Political Change in Washington**

The national political equation affecting Glacier Bay changed dramatically with the mid-term elections of 1994, when the Re-

publican party took control of both houses of Congress. Heavy with seniority, Alaska's delegation gained unprecedented power. Sen. Murkowski became chairman of the Senate Committee on Energy and Natural Resources, which has jurisdiction over the national park system, and Rep. Young became chairman of the House Committee on Resources, which also has jurisdiction over the national park system. Ted Stevens was a senior member of the Senate Appropriations Committee, and in line to become its chairman. Stevens was very effective in using the appropriations process to direct huge amounts of federal money to Alaska and to direct the policy of federal agencies. The power of Alaska's congressional delegation, however, was limited by what the Clinton administration would agree to.

#### **Fisheries Research (1991-2003)**

In contrast to its Organic Act mandate to manage the parks for resource protection

<sup>CCCC</sup> Ross told the author that Glacier Bay N.P. in the 1990s had some of the toughest issues facing the NPS, including commercial fishing and cruise ship regulation.

and enjoyment, Congress provided the NPS with no specific mandate to develop a science program that would provide a basis for the management of natural resources. Despite decades of prodding from within and outside the agency, the Service failed to take the initiative to develop a significant science program on its own. A conference of government and private experts held at Vail, Colorado in 1991 as part of the Park Service's 75th anniversary proceedings produced the "Vail Agenda." The report stated bluntly that the Service's support of science was "sporadic and inconsistent," and that the agency overall was "extraordinarily deficient" in scientific matters.<sup>616</sup>

An early advocate for at least some science in Glacier Bay was Chief Ranger David Butts, who in 1963 recognized the need for research on Glacier Bay's commercial fisheries. Butts wrote that "Studies of both fresh and saltwater fisheries [are] greatly needed. Present efforts are merely small scale 'extensive' probes in order to obtain some data on this valuable resource. More intensive study as a part of a carefully planned research program is necessary if we are to understand this resource and protect it wisely."<sup>617</sup> The 1964 Glacier Bay annual fisheries resources report—likely written by Butts—stated the need for the services of a "fishery expert" whose job would include gathering data on species distribution and abundance.<sup>618</sup> Comprehensive scientific research being of very low priority for the NPS, Butts's recommendation fell on deaf ears. To be sure, the NPS was evolving toward science-based management of its natural resources, but it still had a long way to go. Despite the growth of environmental awareness nationally, Mission 66 was at that time still in full swing, and the NPS remained focused on the development of visitor facilities and related management programs.

At Glacier Bay in 1967, Superintendent Bob Howe, himself a biologist by training, needed to fill a vacant ranger position. Howe recognized the park's lack of knowledge of the biological resources the NPS was charged to protect, and he wanted someone who had a background in biology as well as experience in Alaska's backcountry.<sup>DDDD</sup> Greg Streveler, who had been working as a biologist for Alaska's

Department of Fish and Game, fit the bill perfectly and was hired. Several years later the park established a park biologist position. Streveler, a generalist who knew something of both terrestrial and marine biology, successfully competed for the position and retained it until leaving the Park Service in 1980.<sup>EEEE</sup> The park biologist position was eliminated at the time of Streveler's departure, and responsibility for the work of the sort he was doing transferred to the Resource Management Division.

The 1964 recommendation of David Butts to employ a fishery expert would, however, go largely unheeded for nearly three decades. The small amount of commercial fisheries research that was done at Glacier Bay during those years was overseen by the park's resource management division. That changed in 1991, when a small, professionally-staffed research division was established at Bartlett Cove. To head the new division Superintendent Marvin Jensen hired Jim Taggart, who had received a Ph.D. in zoology from the University of California at Santa Cruz in 1987 and had done marine mammal research in western Alaska. Taggart was assisted beginning in 1992 by seasonal biological technician Chad Soiseth, who became the fisheries biologist at Glacier Bay in 1996.

Within the research division, Glacier Bay's commercial fisheries research program was born specifically of a need by the NPS to learn more about the impacts of commercial fishing in the Bay. It was also supported by a general NPS policy (1988) to inventory and monitor the natural resources under its stewardship "to detect changes that may require intervention and to provide reference points for comparison with other, more altered environments."<sup>619</sup>

The principal task of the fisheries research program was to determine what effects commercial fishing had on Glacier Bay's ecosystem.<sup>620</sup> If the findings demonstrated that commercial fishing jeopardized the agency's mandate—as declared in the 1916 Organic Act—to "...conserve the scenery and the natural and historic objects and the wild life therein ... by such means as will leave them unimpaired for the enjoyment of future generations," then there might be justification to close fishing.<sup>621</sup> In relation to Glacier Bay's fisheries, however, the term "unimpaired" presented a problem:

<sup>DDDD</sup> The issue of greatest concern at the time was potential hard rock mining within the monument.

<sup>EEEE</sup> Streveler still resides in Gustavus, where he works as an independent environmental consultant. His broad understanding of Glacier Bay's natural environment is unparalleled.



Figure 33: NPS researcher Phillip Hooge implanting a sonic tracking device in an adult halibut in Glacier Bay. (NPS collection, Bartlett Cove)

it was difficult—and perhaps impossible—to quantify this term because fish populations fluctuate naturally and there was no baseline data on unfished populations. Time was of the essence, as the commercial fishing issue was rolling ahead, but the sort of questions that needed to be answered would require a number of years, if not decades, of study. In 1996, the NPS estimated that a 10-year research program to determine the effects of commercial fishing on marine and riparian habitats would cost \$1,300,000 per year.<sup>622</sup>

Fisheries research in Glacier Bay began in earnest in 1992, and focused on the three most important commercial species: Dungeness crab, Pacific halibut, and Tanner crab. In addition to the research, the geographical distribution of commercial gear for these species was monitored. Basic oceanographic work, including an important mapping of Glacier Bay's benthic habitats, was also begun.

The most prominent study of Dungeness crab was a multi-agency study that involved the NPS, the National Marine Fisheries Service, the U.S. Geological Survey, the University of Alaska, and the Alaska Department of Fish and Game.<sup>FFFF</sup> (NPS research was viewed as suspect by some who thought the agency was inherently biased toward proving commercial fishing was damaging Glacier Bay's ecosystem. The involvement of the different agencies provided

the study with a strong element of credibility.) The intent of the study was to document changes in the structure of Dungeness crab populations in Glacier Bay that would result from the anticipated closure of the Dungeness crab fishery. The 11-year study documented a dramatic increase in the relative abundance of large male Dungeness crab following the closure of the Dungeness crab fishery in Glacier Bay.<sup>623</sup> From their experience, fishermen—particularly Duke Rothwell, whose strategy was to fish an area, then let it “rest” so the numbers and size of crab would rebound—would have expected this, but the changes had not been scientifically documented until this study was completed.

Research efforts in Glacier Bay on halibut focused on diet, home range, site fidelity, habitat selection, distribution patterns, and the relationships between halibut and other species (see Figure 33).<sup>624</sup> The most prominent halibut study was an effort to determine the species's movement patterns. In this study, more than 1,500 longline-caught halibut were fitted with coded wire tags. Sonic transmitters about the size of shotgun shells were implanted in an additional 97 halibut larger than about 100 pounds. Coded wire tags were recovered when the halibut were caught by commercial fishermen, sportsmen, or researchers. The locations of halibut fitted with transmitters were

<sup>FFFF</sup> The study was officially known as the “Multi-Agency Dungeness Study” (“MADS”).

monitored with a special receiver. The study found that juvenile halibut moved widely, but tended to stay in Glacier Bay, while large, sexually mature individuals tended to have a much smaller home range.<sup>625</sup> This was something of a surprise to most fishermen: the conventional wisdom was that halibut generally migrated out of Southeast Alaska's waters into the Gulf of Alaska for the winter.

The Tanner crab research effort focused on the species's distribution and movement. To determine the species's distribution, a test pot was set in each grid of a square-kilometer grid system that comprised all of Glacier Bay. A tagging program attempted to determine movement patterns.

Fisheries research in Glacier Bay was conducted on government-owned as well as on chartered local fishing vessels. The 31-foot *Drumlin*, owned by the NPS was involved, as was the 38-foot research vessel *Quillback*, which was borrowed from the DOI's Mineral Management Service. The *Quillback* was returned in 1998, and replaced by the 50-foot *Tammik*, a used salmon seiner that was renamed the *Alaskan Gyre*. The "Gyre," as it was called, was transferred from Glacier Bay to Prince William Sound in 2006. In 2007, the 24-foot USGS vessel *Sigma T* (formerly Naomi Sundberg's Dungeness crab vessel *Wavelength*, was stationed at Glacier Bay to provide support for researchers.

The stability of the fisheries research effort in Glacier Bay suffered from a lack of consistent funding. (At its peak, circa 1995, the budget for the research program was \$400,000 annually.<sup>626</sup>) The program also suffered from a lack of administrative continuity: in a major reorganization, the DOI in 1993 consolidated the biological research functions of all the department's bureaus, including Glacier Bay N.P.'s fledgling research division, into the newly-created National Biological Survey. Glacier Bay's research division became the Glacier Bay Field Station and was placed under the supervision of the Alaska Science Center in Anchorage. In 1995 the National Biological Survey's name was changed to the National Biological Service (NBS). The NBS, in turn, became part of the Biological Research Division (BRD) of the U.S. Geological Survey in 1996. The BRD's primary mission is to provide research expertise for DOI bureaus. The Glacier Bay Field Research Station was shuttered in 2006. During its short heyday, its staff included two perma-

nent scientists, a research vessel captain, an administrative secretary, a Ph.D. student, and usually 1-3 biological research technicians.<sup>627</sup>

With little hard scientific data on Glacier Bay's fisheries, at least one individual acknowledged in a 1996 NPS draft document that "No biological or sociological evidence is available to determine what, if any affects (sic) commercial fishing has on Park resources."<sup>628</sup> Unable to make a case that commercial fishing damaged Glacier Bay's marine ecosystem, the agency would have to base its reasoning for terminating commercial fishing in Glacier Bay on the more nebulous issues of "park values" and the global need for marine reserves.

### Superintendent Jim Brady

Marvin Jensen was transferred to Mojave National Preserve in December 1994 and was replaced as Glacier Bay's superintendent by Jim Brady, who arrived at Bartlett Cove in January 1995. Unlike Jensen, Brady was given clear marching orders: NPS Regional Director Robert Barbee instructed him that his first priority was to resolve the commercial fishing issue by implementing at least a variation of the plan initiated under Jensen. Among others, an additional priority for Brady was to rebuild the NPS's strained relationship with the people of Hoonah.

Brady and his staff later defined the NPS's main goals in resolving the commercial fishing issue:

- Preserve and perpetuate habitats, natural ecosystem processes, biodiversity, and population structure and density of species;
- Protect the wilderness and other inspirational, recreational, and educational park values;
- Expand knowledge and understanding of marine ecosystems;
- Enhance visitor experience opportunities;
- Sustain and strengthen Hoonah cultural ties to the park.<sup>629</sup>

Although traditional visitor-oriented NPS responsibilities were important, a Brady-era NPS draft document of unknown authorship dated April 1996 stated it was most important to "maximize the marine sanctuary value of Glacier Bay."<sup>630</sup>

After 33 years of service with the NPS, Brady had been eligible for retirement for a

number of years. His career with the NPS nearly at its end, Brady could afford to be bold, to do what he felt was right without fear of jeopardizing his future in the Service. He was not shy about doing so, although early on he deferred to Randy King, who had been immersed in the commercial fishing issue for half a decade. Brady's ideas regarding how the issue might be resolved did not always coincide with those of his superiors in Washington, DC.

Very shortly after he received word of his assignment to Glacier Bay, Brady became involved in developing a strategy to deal with the commercial fishing issue, which had been languishing in part because Molly Ross had been too busy with other issues. His basic strategy was to attempt to negotiate a settlement with the Knowles administration. The staff at Glacier Bay thought Knowles might support, or at least not oppose, closing Glacier Bay to commercial fishing if it received something in return, such as allowing the outer waters to remain open.<sup>631</sup>

**"Pay me not to fish in Glacier Bay!"—Tom Traibush to Bruce Babbitt, September 1994<sup>632</sup>**

In late June 1995 Brady began meeting privately with Dungeness crab fishermen who fished the Beardslee Islands. Those who participated in the meetings characterized Brady as sincere and respectful, with Charlie Clements expressing their appreciation for Brady's "attempt to understand us as individuals and not just as a political problem."<sup>633</sup> The first meeting seems to have been with Otto Florschutz, who in 1984 had bought Duke Rothwell's boat, *Adeline*, and crab fishing operation. Florschutz explained to Brady that he was not a radical, but he would do everything he could to stop the NPS from shutting down commercial fishing in Glacier Bay. He said that if the NPS wanted the Glacier Bay's fisheries closed, the NPS should "replace our income."<sup>634</sup>

After meeting among themselves on July 12, Beardslee Islands Dungeness crab fishermen Tom Traibush, Otto Florschutz and Charlie Clements on July 15 sent a joint letter to Jim Brady requesting a meeting to "discuss language

to promote an acceptable solution and form of compensation."<sup>635</sup> Brady met with the group not long afterward in Gustavus, at the home of Tom Traibush and Naomi Sundberg.<sup>GGGG</sup> Subsequent letters to Brady by the fishermen listed three possible forms of compensation:

1. a concession permit to operate a tour boat in Glacier Bay;
2. 50,000-60,000 pounds of halibut or sablefish IFQs;
3. a cash settlement in the range of \$350-500 thousand.<sup>636</sup>

The idea of fishermen being compensated with a concession permit would have been complicated and would have required waiting for existing permits to expire. This idea seems to have been rejected outright. The halibut quota share program had been implemented only a year earlier, and the Government had begun seizing shares owned by fishermen who owed back taxes.<sup>HHHH</sup> It was thought that these could be transferred to fishermen at little cost to the government. Brady rejected the idea of compensation with IFQs as being too complicated.<sup>637</sup>

A simple buyout, however, was an option. The idea had been discussed at Glacier Bay N.P. as early as 1989 among park officials, but was given greater consideration after a \$25 million federal buyout of excess fishing capacity in the Northeast in 1994-1996.<sup>IIII</sup><sup>638</sup> This was reflected in a meeting Brady had with Tom Traibush on the dock at Bartlett Cove. Brady asked Traibush what it would take to, in Traibush's words, "make you guys go away." Traibush responded that if the NPS closed commercial fishing in Glacier Bay, he would take the issue to court. (Traibush later calculated how much he could afford to spend on a court challenge.) Brady then asked how much it would cost for the Government to buy him out. Traibush gave Brady an estimate that he made clear represented only himself.<sup>639</sup>

In September 1995, Glacier Bay N.P. staff met with ADF&G personnel to

<sup>GGGG</sup> Matt Metcalf was not party to the discussions, but about this time he realized that the end of his Dungeness crab fishing career in Glacier Bay might really be at hand.

<sup>HHHH</sup> See page 105 (Fish Report 6) for a description of the halibut quota share program.

<sup>IIII</sup> Government buyouts or "buybacks" are generally associated with fleet overcapitalization and over-harvest capability that jeopardize the fleet's economic viability and/or threaten fish stocks. The situation was different at Glacier Bay. Here the buyout was not related to over-harvest or overcapitalization.

explore options for a resolution to the commercial fishing issue. The parties agreed that a stable, long-term resolution would require the involvement of key stakeholders representing the commercial fishing industry, Natives, and environmental groups. To that end, NPS and ADF&G agreed to jointly sponsor stakeholder meetings in Juneau in mid-November.<sup>640</sup> Those who participated in these and subsequent meetings were sometimes referred to as the “Glacier Bay Working Group,” not to be confused with a 1993 group with the same name. Among the groups represented at the meetings were the Allied Fishermen of Southeast Alaska (AFSA), Hoonah Indian Association (HIA), National Parks and Conservation Association (NPCA), and the Southeast Alaska Conservation Council (SEACC).

The November 15-16 meetings were held in ADF&G’s conference room in Juneau. The meeting’s sponsors set a modest agenda: “build a better understanding of the issues and stakeholder concerns and needs, and to develop a framework for seeking consensus,” and noted that “this unresolved issue leaves individuals, communities, and the interests of the State and National Park in an unacceptable void.”<sup>641</sup> The meeting was mostly a “get acquainted” affair and accomplished nothing of substance.

Likewise, little was accomplished in the meetings of December 5<sup>th</sup> and 6<sup>th</sup>. Though led by a contracted facilitator/mediator, stakeholders did little more than make what the NPS termed a “general (though tenuous) commitment to participate in discussions,” and establish ground rules—no electronic recording among them—for future meetings.<sup>642</sup>

That same month, Alaska’s House of Representatives waded into the Glacier Bay commercial fishing issue, at least rhetorically. The chamber passed a resolution that claimed that the prohibition of commercial fishing (and subsistence use) in the park would have “disastrous and widespread economic, environmental and social consequences” for Southeast Alaska’s fishermen and communities. The legislators concluded by requesting that the NPS promulgate regulations to provide for the continuance of commercial fishing in Glacier Bay N.P. under the laws of the state. The resolution was passed by Alaska’s Senate in late February 1996.<sup>643</sup> It had no effect whatsoever on the NPS’s effort to terminate commercial fishing in Glacier Bay.

The following month Jim Brady and his staff met with ADF&G Deputy Commissioner Rob Bosworth, who represented the department on the Glacier Bay commercial fishing issue. Bosworth had a rustic second home in Gustavus, and knew personally some of the individuals (including the author) involved in commercial fishing in Glacier Bay. Brady wanted to negotiate a settlement, and said that the NPS was willing to look at changing policy or regulations to allow commercial fishing to continue in Glacier Bay, subject to restrictions that involved the prohibition of commercial fishing during the visitor season and an immediate closure of wilderness waters. This agreement, he said, would garner the support of DOI. Bosworth stated that ADF&G might be willing to work with the NPS on designing special Glacier Bay regulations.<sup>644</sup> Such was not to be. Glacier Bay had become a high profile issue at DOI, and the department hierarchy was not willing to support a continuation of commercial fishing. It wanted a phase-out, ideally a short phase-out, that would result in a complete end to commercial fishing in the bay.

With the support of his regional director, Jim Brady worked directly with Assistant Secretary of the Interior George Frampton and his special assistant, Molly Ross. At least part of the reason for the close relationship was Molly Ross’s concern that Brady needed the guidance that she and Frampton could provide.<sup>645</sup> Simply put, Brady was far more accommodating of commercial fishing interests than Frampton and Ross preferred. In mid-March 1996, Brady recommended a framework to resolve the Glacier Bay commercial fishing issue. Among other components, it involved the continuation, save during the primary visitor season (May 1 through September 30), of commercial fishing in the waters of Glacier Bay—including wilderness water—for 15 years, after which the activity would be reevaluated for possible continuation. Additionally, commercial fishing would not be restricted in the park’s outer waters.<sup>646</sup> Frampton and Ross thought broader closures could be achieved on a much shorter timetable.

The DOI plan that evolved was to continue stakeholder meetings while working on a modification of the 1991 proposed rule, which the agency considered “stale.”<sup>647</sup> Another factor that forced the abandonment of the 1991 rule was that it had been held for so long by DOI



that it might not have met federal procedural requirements for publication as a final rule.<sup>648</sup>

Frampton and his successor, Donald J. Barry, wanted a maximum phase-out period of 5 years. Brady thought negotiations with commercial fishing interests would break down if more time was not offered. To “keep people at the table,” Brady proposed a 15-year phase-out period.<sup>649</sup> There was a lot of support in Southeast Alaska for a longer phase-out period—one was for 77 years—but the NPS, for the time being, decided it was committed to a maximum of 15 years, which it considered very liberal.

Although the court had determined in 1994 that commercial fishing was illegal in wilderness waters, the regulation was not enforced while the NPS worked on a revised Vessel Management Plan. That plan was published as a final rule in May 1996. It closed Glacier Bay’s wilderness waters to motorized use from May 1 through September 15. If enforced, this rule would have ended the summer Beardslee Islands Dungeness crab fishery. Partly as an act of good faith while stakeholder talks were ongoing, however, the NPS agreed to allow commercial fishing in the Beardslees to continue until June 1997.<sup>650</sup>

A second round of the Glacier Bay Working Group stakeholder meetings was held in Juneau on March 13-14, 1996. Proposals were presented by SEACC, AFSA and the NPS with the goal of identifying areas of agreement and disagreement and to focus discussions.<sup>651</sup> Bart Koehler, who represented SEACC at the meetings, thought the working group was “pretty darn close” to reaching an agreement that would retain traditional fisheries on the outer coast, Cross Sound, and Icy Strait in perpetuity, and would delete the Beardslee Islands area from its wilderness designation, while designating Muir and Wachusett inlets as wilderness.<sup>652</sup> Jim Brady pointed out a sticky impediment to the ongoing local consensus process: that the involvement of national conservation groups would be required at some point.<sup>¶¶¶</sup> The groups (mainly the Sierra Club, Wilderness Society, and National Parks and Conservation Association) were more hard-line than SEACC, and the issue could not be resolved comprehensively without their being part of the process.

At the March 14 meeting Brady presented a seven-point proposal to resolve the Glacier Bay commercial fishing issue. The proposal, which was not authorized by the DOI, would be the main subject of the following stakeholder meeting.<sup>653</sup>

In addition to the desire by the NPS and many conservation groups to terminate the commercial fishery, Glacier Bay’s Dungeness crab fishermen faced pressure from another side. Among many stakeholders, the fishery was early-on considered second-tier, of lesser importance than the halibut and salmon fisheries. At least one fishing interest involved in the meetings looked upon the Dungeness crab fishery as trading stock, an expendable fishery that could be terminated in exchange for favorable consideration by the NPS and conservation interests of other Glacier Bay fisheries. Tom Traibush was advised that he and his fellow Glacier Bay Dungeness crab fishermen might have to “take one for the team.”<sup>654</sup> Sensing his vulnerability, Traibush almost immediately hired Jim Clark, a Juneau attorney with close ties to Alaska’s congressional delegation (particularly Senator Murkowski), to represent him.<sup>¶¶¶¶</sup> At the next stakeholder meeting, Daniel Boone, an attorney colleague of Clark’s, was at Traibush’s side. With the involvement of a private attorney, the Dungeness crab fishery quickly became a first-tier issue, and the intensity and sophistication of the Glacier Bay negotiations were ratcheted up a notch. Bill Woolf, Senator Murkowski’s aide who specialized in commercial fisheries issues, said in late 1996 that the Beardslee Islands crabbers were the “most serious problem” in resolving the Glacier Bay issue. Woolf favored granting the handful of crabbers with 10-year histories in the Beardslees life tenancy or what he thought was a reasonable buy-out option: approximately \$50,000.<sup>655</sup> At DOI in the spring of 1996, Molly Ross, in contemplating the possibility of legislation to settle the Glacier Bay issue, wondered whether a “few life permits” should be authorized.<sup>656</sup>

Traibush and other “similarly situated” Beardslee Island crab fishermen soon attempted to negotiate a deal of their own. Represented by Clark, the fishermen proposed a compromise: in exchange for being able to fish in Glacier Bay in perpetuity in all seasons subject to ADF&G regulations, they were willing to stipulate that

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¶¶¶ Jack Hession, of the Sierra Club, was present at the meeting.

¶¶¶¶ Frank Murkowski was elected governor of Alaska in 2002. Jim Clark became his chief of staff.

their collective right to fish would terminate when they ended their fishing careers. The phase-out desired by the NPS would occur, but on the fishermen's schedule. The proposal warned that any litigation on the issue would be "protracted and unpleasant."<sup>657</sup> The offer fell on deaf ears, but soon thereafter, at the third round of stakeholder meetings, which took place in Gustavus on May 2-3, 1996, an 11-member work group was established to address compensation for the Beardslee Islands Dungeness crab fishermen.<sup>1111</sup> The group met on May 31 and discussed the historical effort in the fishery and participation thresholds for eligibility, as well as alternatives to compensation.<sup>658</sup>

The main focus of the early May stakeholder meetings was a modified version of Brady's seven-point proposal that would eventually close Glacier Bay proper to make it a marine sanctuary or "core protected area" — "a minimally disturbed ecosystem with high biological diversity where researchers can observe and study unique, exceptional natural and successional processes."<sup>659</sup> According to the NPS, "Glacier Bay could be a leader in marine conservation and the north-most marine sanctuary/refuge of global significance."<sup>660</sup> Knowledge gained in Glacier Bay could be applied to other areas. What was clear with this proposal, however, was the NPS's focus on ending commercial fishing in Glacier Bay proper, and its willingness to allow it to continue in other waters of the park. The seven points of Brady's proposal were:

1. Authorize commercial fishing in waters outside Glacier Bay proper;
2. Implement the NPS December 1988 Wilderness FEIS Modified Proposed Action that would delete Rendu Inlet, Beardslee Entrance, and the mouth of Adams Inlet from wilderness designation. In exchange, Muir Inlet and Wachusett Inlet above Point McLeod would be designated wilderness;
3. Close Glacier Bay to commercial fishing during visitor season (May-September);
4. Authorize commercial fishing in Glacier Bay during the non-visitor season (October-April), including some wilderness, with a 15-year phase-out period;

5. Reduce sport fishing impacts because sportfishing was viewed by the commercial industry as inconsistent with the park's stated objectives;
6. Develop a Native educational fishery; and,
7. Charter an advisory panel.<sup>661</sup>

The NPS was finally putting substantive proposals on the table. Brady thought considerable progress was made at the meeting, and that opportunities for continued progress clearly existed. He believed that everyone at the table was committed to making the process work and reaching an agreement.<sup>662</sup> Rob Bosworth, the state's principal representative at the meeting, thought that the Glacier Bay issue could actually be resolved if the group continued on its trajectory. It was a big "if," however, given the deep and fundamental divisions that separated the stakeholders, and Bosworth considered a fairly prompt resolution to the issue "pretty unlikely." He saw no alternative other than to continue "plugging away."<sup>663</sup>

Assistant Secretary George Frampton saw little merit in the seven-point proposal, thinking it might be appropriate for a multiple-use area, but not in line with his office's more preservationist objectives. Frampton feared that the stakeholder negotiations could get out of hand very quickly, and he had concerns about the ability of the NPS staff at Glacier Bay to arrive at a satisfactory resolution of the issue.<sup>664</sup> Frampton no doubt had a fine legal and philosophical understanding of the issue, but he was insulated from the personal component that those at Glacier Bay faced almost daily.

The next stakeholder meeting was tentatively scheduled to be held in Gustavus on June 6-7, 1996, but the meeting was cancelled and the stakeholder process stymied when the Service determined that procedural requirements of the Federal Advisory Committee Act (FACA) made more such meetings illegal.<sup>665</sup> The negotiations that George Frampton found so objectionable were on hold.

With its options dwindling, the NPS decided to go it alone and established a strategy and timeline to design a new rule on commercial fishing in Glacier Bay N.P. The agency an-

<sup>1111</sup> The task group consisted of five fishermen, two representatives of the NPS, two representatives of the State of Alaska, one representative of a fisherman's group (AFSA), and one representative of a regional environmental group (SEACC).

anticipated the publication of a final rule around September 15, 1997.<sup>666</sup>

Resolving the Glacier Bay issue remained a “very critical priority” for the NPS, but became less so for the DOI. This led to some frustration at Glacier Bay. A September 1996 decision paper prepared by park staff at Glacier Bay contained the following plea: “We need the Department’s support in resolving the commercial fishing issue. NPS urges action now. The progress achieved to date is eroding and will be lost entirely without clear support, action and direction from the Department.”<sup>667</sup> The NPS proposed moving forward as soon as possible by employing a negotiated rulemaking process that was suggested by Molly Ross. In this process the agency would develop a proposed rule to serve as a focus for negotiations. A FACA chartered committee would then be charged with developing a consensus rule based on the proposed rule. The NPS would then propose the committee’s consensus rule through the regular rulemaking and NEPA process. It was estimated that the process would take a year. A disadvantage of the process in this case was the difficulty of including all interested parties.<sup>668</sup> Brady recognized the importance of “keep[ing] fishermen at the table,” and he suggested that Secretary Babbitt agree to a two-year moratorium on any actions affecting the status of ongoing commercial fisheries in Glacier Bay.<sup>669</sup>

In contemplating what a final rule might look like, the NPS considered the possibility of “compensating or dispensating” displaced commercial fishermen.<sup>670</sup> The DOI wondered if the rule could provide the NPS authority to negotiate voluntary buy-outs of the rights of individual grandfathered fishermen during the anticipated 15-year phase-out period. It was thought that some fishermen who used Glacier Bay only occasionally might be willing to “sell 15 years of opportunity” for “a few thousand dollars up front.” It was thought that a bit of “surgical legislation” would likely be needed to establish a legally defensible program of grandfathering and phase-outs.<sup>671</sup>

Bill Woolf, of Senator Murkowski’s office, had little faith in the negotiated rulemaking

process because he thought that the Sierra Club and The Wilderness Society could not be trusted. In early November, Woolf convened a meeting of a group that he termed the “core stakeholders.” The group was comprised of Randy King (NPS), Judy Gottlieb (NPS), Rob Bosworth (State of Alaska), Bart Koehler (SEACC), Greg Streveler (SEACC), Dale Kelley (ATA), Jev Shelton (fisherman), and Beardslee Islands crabbers Tom Traibush and Naomi Sundberg with their attorney, Daniel Boone. Woolf intentionally did not invite anyone to represent Native/subsistence interests or representatives of national environmental groups. He believed that consensus was reachable within this core group. It may certainly have been, but the reality was that any realistic consensus required the concurrence of the two interests Woolf chose to leave out of the meeting. And Woolf wasn’t even sure what his boss, Senator Murkowski, would agree to.<sup>672</sup> Nothing of substance was accomplished at the meeting, and at least some members left wondering why it had been called.

In December 1996, Brady met with Bill Woolf of Senator Murkowski’s office to discuss the Glacier Bay issue. As opposed to a negotiated rulemaking, Woolf favored continued stakeholder discussions that would hopefully lead to a foundation for legislation. He was looking for a solution that provided for a continuation of commercial fishing in the outer waters that was subject to restrictions (no new gear types) and the designation of Glacier Bay proper as some sort of marine reserve that included some commercial fishing.<sup>MMMM</sup> According to Brady, Woolf also wanted to provide “fair compensation to those who will not have an alternative area to fish in.”<sup>673</sup>

Brady and his staff, on the other hand, continued to seek out options on how to make Glacier Bay a marine reserve that did not include commercial fishing. That same December, an invitation-only federal interagency meeting was held in Juneau. The subject of the meeting was “Marine Reserves: Possible Applications for Glacier National Park and Preserve.” Its purpose was “To learn about and discuss the objectives, effectiveness, design, and monitoring of marine fisheries reserves in other

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<sup>MMMM</sup> In 1993, John Katz, Alaska’s governor’s representative in Washington, DC, said that maintaining provision for the continuation of commercial fishing in what George Frampton termed “off coastal” waters of Glacier Bay N.P. was something Alaska’s congressional delegation (and the state) would “fall on their swords” over. In the spring of 1998, Bill Woolf said that the termination of commercial fishing in Glacier Bay’s Outer Coast waters would only occur “over the dead bodies of the Alaska Delegation.”

parts of the U.S. and world; learn about how this information could be applied to managing fisheries in Glacier Bay waters.”<sup>674</sup> Some of the meeting involved strategizing on how to marry the marine reserve concept to the elimination of commercial fishing in Glacier Bay. On the subject of minimizing public objection to the possible closing of Glacier Bay to commercial fishing, Jim Bohnsack, research fishery biologist with the National Marine Fisheries Service, said that calling a closure “experimental” often helps to sell the idea to fishermen: After 10 years, according to Bohnsack, people are accustomed to the closure.<sup>675</sup>

Not long after this meeting, researcher Jim Taggart pointed out that the elimination of commercial fishing in Glacier Bay would allow researchers to determine what population parameters are characteristic of unexploited fish populations. This knowledge, in turn, would provide marine resource managers with an idea of what “unimpaired” meant quantitatively.<sup>676</sup>

Under Jim Brady, the relationship with the people of Hoonah improved. Evidence of this was the signing in September 1995 of a 5-year memorandum of understanding (MOU) with the Hoonah Indian Association (HIA), which is the federally-recognized governing body of the Huna Tlingit, whose traditional homeland included Glacier Bay.<sup>NNNN</sup> In 1998 the HIA represented 547 members.<sup>677</sup> The impetus for the MOU was an executive memorandum signed by President Clinton earlier that year that directed all agencies of the federal government to formalize government-to-government relations with federally-recognized Native American tribes.<sup>678</sup> The MOU between the NPS and HIA was largely the result of groundwork laid by NPS regional cultural anthropologist Tim Cochrane, park resource management specialist Mary Beth Moss, and anthropologist Wayne Howell. It committed the NPS to work with the HIA to protect the cultural heritage of the Huna Tlingit, explore ways to acknowledge and honor their cultural connection to Glacier Bay, and allow cultural activities in Glacier Bay that were “compatible with park objectives.” Toward that end, the NPS expressed its commitment to work with the HIA to develop a cultural fishery program as a means of sustaining cultural knowledge and tradition.<sup>679</sup>

In the 1996 election, Bill Clinton was re-elected as president, and the Republican Party enhanced its control of the Senate by gaining two seats. The most important result of the election for Alaska was that when the new Congress convened in January 1997, Alaska’s Senator Ted Stevens became chairman of the Senate Appropriations Committee. As such, he was one of the most powerful politicians in Washington, DC. One of Stevens’s preferred methods of expeditiously passing (sometimes unpopular) legislation was by attaching it as a last minute “rider” to a must-pass and often unrelated appropriations bill. This maneuver circumvented the committee process and irritated many within and outside of Congress. Bruce Babbitt derided the method as a “back-room, back-door, [and] dead-of-night way” to do the public’s business.<sup>680</sup> For commercial fishing interests seeking a resolution of the Glacier Bay commercial fishing issue on favorable (or the least unfavorable) terms, Stevens quickly replaced the more ideologically motivated and as yet unsuccessful Frank Murkowski as the “go-to guy.”

Shortly after Bill Clinton was inaugurated to his second term of office, Bruce Babbitt hired William Y. Brown, a former chairman of the conservation group Ocean Conservancy, to be his science advisor. Among Brown’s duties was to explore ways in which to expand DOI’s role in protecting the oceans.<sup>681</sup> While Brown had little directly to do with Glacier Bay, his appointment signaled the Clinton administration’s strong interest in protecting marine areas.

### **George Frampton's Time for Action**

Assistant Secretary of the Interior for Fish and Wildlife and Parks George Frampton gave the Clinton administration advance notice that he would leave the DOI in mid-February 1997. Frampton recognized that his last opportunity to begin resolving the Glacier Bay issue was at hand. Also, he was concerned that in the absence of DOI action, Alaska’s congressional delegation might actually succeed in passing Glacier Bay legislation hostile to DOI’s goals. In mid-January 1997, Frampton asked NPS and DOI to embark on an intense two to three-week effort to develop a proposed rule

<sup>NNNN</sup> The MOU was renewed for five years in September 2000, and again in 2005.

for possible publication in the near future. Rulemaking had the advantage over legislation of including extensive public participation and, important to Frampton, the ability of the NPS to influence the decision. A disadvantage of promulgating a rule was that it would be subject to revision by a future administration. Legislation, on the other hand, was the result of a political process, and resulted in statutes, which were more difficult to change than regulations. The general approach, as directed by the DOI, was to secure a phase-out of commercial fishing in Glacier Bay proper through a ban on such activity except for individuals who, based on historic use, would be grandfathered for a limited period of time.<sup>682</sup> Frampton considered it fortunate that discussions and interest in Alaska had “advanced the issue.” “The time for action,” he wrote, “is now.”<sup>683</sup> According to a briefing paper prepared for Bruce Babbitt in February 1997, John Katz had indicated that the state supported the rulemaking approach, but recognized that some “surgically precise” legislation might be needed as well.<sup>684</sup>

Frampton’s staff spent considerable time deciding how to best expedite the process bureaucratically. It also pondered phase-out periods and the possibility of buyouts. Frampton favored buyouts as a way to hasten the termination of the fishery.<sup>685</sup>

In Alaska, Supt. Brady believed the treatment of the handful of fishermen who had a history of Dungeness crab fishing in the Beardslee Islands would set the tone for the overall rulemaking. The group had attracted the concern of the fishing industry, the State of Alaska and Alaska’s Congressional delegation, and Brady thought there would be a need to provide them some fishing opportunity in the Beardslees. Brady considered this issue, as well as two others, to be “keystone, deal-maker/deal-breaker” issues. The others were the length of the phaseout of the fisheries (Brady expected the state to hold out for a phaseout period of at least 15 years), and, in order to give the state a legitimate stake in the issue and lessen its opposition, a provision for joint federal/state management of ongoing fisheries in Glacier Bay N.P.<sup>686</sup>

Within a month Frampton was supplied with a description of the proposed rule, which he quickly approved.<sup>687</sup> Frampton promptly contacted Rob Bosworth at ADF&G and John Katz, the governor’s representative in Wash-

ington, DC, regarding his department’s effort to force a solution to the Glacier Bay issue. Frampton did not notify Alaska’s Congressional delegation.<sup>688</sup> Before the end of January, the Sierra Club and other interested parties were briefed regarding the content of the new proposal.<sup>689</sup> In its haste to resolve the issue on its own terms, the DOI decided to publish a proposed rule before the environmental assessment (EA) required by the National Environmental Policy Act (NEPA) was completed. Draft alternatives outlined when the proposed rule was published would be fleshed out in the EA. Although the NPS would accept written comments on the proposed rule until October 15, 1997, the formal public comment period would follow publication of the EA.

In early March 1997, the U.S. Ninth Circuit Court of Appeals upheld the lower court’s decision in *AWA v. Jensen* that the NPS’s Organic Act did not, per se, prohibit commercial fishing in Glacier Bay N.P. One concurring judge (Mary M. Schroeder) stated that the court’s decision “should not be interpreted as an endorsement of unfettered agency discretion to permit commercial fishing in the Park.”<sup>690</sup>

Brady recognized that the NPS had a degree of discretion on whether or not to allow commercial fishing in Glacier Bay N.P.’s non-wilderness areas. He noted that if commercial fishing was to be permitted in Glacier Bay N.P., the current general regulation forbidding it would need to be modified.<sup>691</sup>

### 1997 Proposed Rule and Its Backlash

The 1997 proposed rule got off to a rough start. To help insure that it was portrayed as DOI/NPS intended (not an elimination of commercial fishing, but a proposal to facilitate robust discussion of the issue), there was supposed to be a carefully controlled roll-out of the rule beginning about April 15. Courtesy and tradition demanded that Alaska’s congressional delegation and the state be briefed prior to the rule’s publication in the *Federal Register*. As it happened, however, the public—including Alaska’s congressional delegation and the state—first learned of the rule’s imminent publication not from DOI/NPS, but in an April 10 article in the *Anchorage Daily News*. Even the title of the article, “Park Fishing May Be Axed,” though precisely accurate, was problematic in light of the softer message DOI/NPS wanted to portray. In the article, Glacier

Bay Superintendent Jim Brady remarked that the proposed rule was expected to be issued in about two weeks. Molly Ross first learned of Brady's pre-emption of their plan through a phone call from Senator Murkowski's office. (Ross's reaction was a groan, followed by a profuse apology, quick plans to make more apologies and a plan to keep the proposed rule on track.)<sup>692</sup>

On April 16, 1997 the NPS published a new proposed rule that was, except for the closure of commercial fishing in Glacier Bay proper during the visitor season, considerably less restrictive than its 1991 predecessor.<sup>693</sup> The new proposed rule incorporated each of Jim Brady's "keystone" recommendations, as well as many of the ideas discussed in the 1995-1996 stakeholder meetings, particularly those presented by the NPS.<sup>694</sup> The proposed rule would:

- prohibit all commercial fishing in Glacier Bay proper but provided exemptions for a 15-year phase-out period for fishermen who had developed an historical reliance in any or all of four specified fisheries (trolling for salmon, long-lining for halibut, and pot and ring net fishing for Dungeness and Tanner crab) and could verify participation during six of the last ten years. Fifteen years was considered enough time for fishermen to adjust their activities to waters outside Glacier Bay, to amortize investments they had made in vessels and gear, and, in some cases, to continue fishing until retirement.<sup>695</sup> Subject to the availability of funds, the NPS or a third party could offer to purchase and retire exemption permits from fishermen willing to sell them;
- close Glacier Bay proper to all commercial fishing during the visitor season (May 1-September 30);
- implement the statutory prohibition on commercial fishing in designated wilderness marine waters, with the possible granting of a special use permit that would allow certain Beardslee Islands Dungeness crab fishermen to continue

to take crab in specified locations as part of an ongoing research project that was expected to last an additional 5-7 years;<sup>694</sup>

- propose management of Glacier Bay's commercial fisheries under a plan cooperatively developed by NPS and the state, but subject to the Secretary of the Interior's authority to "protect park purposes and values;" and
- allow most commercial fisheries in the park's non-wilderness marine waters outside Glacier Bay proper to continue for 15 years, after which they would be subject to re-examination.

As it had done while Marvin Jensen was superintendent, the NPS claimed that the economic effects of the proposed rule would be "negligible" and that the proposed 15-year phase-out period would allow fishermen to "disperse to areas outside of Glacier Bay proper with no significant change in their landings and revenues."<sup>695</sup> The possible exception was the 6-10 Dungeness crab fishermen who operated in Glacier Bay N.P., primarily in the Beardslee Islands. Given that the limited Dungeness crab fishing grounds in the region were already fully utilized, the opportunities available to these fishermen (once the possible research fishery was completed) would be limited. The NPS, however, took no responsibility for the impending closure of the Beardslee Islands to commercial fishing, citing their designation as wilderness in 1980 under ANILCA.<sup>696</sup>

The NPS was quick to publicly portray the proposed rule as only a proposal that would provide the legal basis and structure for reinitiating and encouraging discussion of the Glacier Bay commercial fishing issue among all interested parties.<sup>697</sup> Commercial fishing interests had a more sinister conclusion: it was all about closing Glacier Bay to commercial fishing as soon as possible.

The NPS scheduled open houses/workshops for May in Gustavus, Hoonah, Pelican, Elfin Cove, Juneau, Sitka and Seattle.<sup>698</sup> The public was given fully six months (until Octo-

<sup>692</sup> SEACC later complained that the regulations "failed to incorporate numerous proposals made by the Glacier Bay Stakeholders Group." (Bart Koehler, May 20, 1998 letter to Jim Brady.)

<sup>693</sup> According to a DOI/NPS planning document, "The 15 year period of time was derived from a general assessment of the average age of the fishers involved in park fisheries, and the amount of time it would take for these fishermen to retire." (Glacier Bay National Park Framework for Proposed Rulemaking, January 20, 1997.)

<sup>694</sup> Some at DOI worried that a future administration could "drive a truck through this opening in the Wilderness Act."

ber 15, 1997) to comment on the issue.<sup>RRRR</sup> The DOI hoped to have a comprehensive resolution to the controversial issue crafted before the 1998 summer visitor season.<sup>699</sup> Secretary of the Interior Bruce Babbitt wanted the issue settled on his watch, saying in a DOI news release that it was time to “identify the best solutions and get it done.”<sup>700</sup>

In promoting and defending its plan, the NPS continued to insist that commercial fishing in the non-wilderness waters of Glacier Bay N.P. was illegal.<sup>701</sup> Although this may have been technically correct, it was misleading: the district court’s decision, upheld by the appeals court only a month prior to the release of the proposed rule, had clearly stated that there was no statutory ban on commercial fishing in the non-wilderness waters of Glacier Bay N.P., and that the NPS had the authority to allow commercial fishing in such waters through a complex environmental planning process and regulatory changes. Commercial fishing in Glacier Bay N.P.’s non-wilderness waters was illegal only because the NPS had not made it legal. The Small Business Administration later harshly criticized the NPS over this “misstatement of the law.”<sup>702</sup>

Within a month of the proposed rule’s release, Alaska Governor Tony Knowles asked the NPS to work with the state to immediately reconvene the stakeholder discussions, which to Knowles represented the best chance for a fair resolution of the issue.<sup>703</sup> It was the state’s observation that the DOI was most interested in a compromise that ended commercial fishing in Glacier Bay proper and allowed it to continue in the other waters of the park. According to the state, DOI was interested in protecting migratory species, such as king salmon, but more interested in protecting “seasonal” species, such as halibut. DOI was most interested, according to the state, in protecting Glacier Bay’s resident species, such as Dungeness crab.<sup>704</sup> Two months later ADF&G director Frank Rue demanded that the NPS provide a comprehensive analysis of the economic effects of the proposed rule. Specifically, Rue asked:

1. What will be the long-term and short-term socioeconomic impact to fishermen and their families, processors, processing workers, and local communities if commercial fishing is phased out in the Park?

2. What will be the socioeconomic impact to these same groups when fishermen are forced out of traditional Park waters and must disperse to other fishing grounds in Southeast Alaska?
3. What other fisheries are these fishermen most likely to shift their effort into or will they exit the regional fisheries altogether?
4. What will be the biological impact to fish and game populations due to increased pressure on stocks in other areas? What impact will this have on the State of Alaska’s management regime for those fisheries affected by the redistribution of effort?
5. What are the perceived national benefits to be gained by applying a prohibition on commercial fishing in the Park?<sup>705</sup>

Brady responded that a comprehensive economic assessment would be made, but it would be hampered somewhat by the difficulty of obtaining fishery landing data from ADF&G and the fact that ADF&G’s statistical reporting areas did not coincide with the boundaries of Glacier Bay N.P.<sup>706</sup>

At the request of commercial fishermen, Alaska’s Legislature responded to the proposed rule by appropriating \$100,000 of Department of Law funds to defend commercial fishing in Glacier Bay N.P. The money was drawn from a fund used for legal battles over federal-state issues.<sup>707</sup> Some of the money was used to support litigation, some to support public stakeholder meetings, and some to pay the expenses of Rob Bosworth and two fishermen who journeyed to Washington, DC late that year to lobby on the Glacier Bay issue.<sup>708</sup>

One of the benefits touted by the NPS of the proposed rule was that it would “minimize conflicts among visitors pursuing different yet appropriate park experiences.”<sup>709</sup> The NPS was basically referring to kayakers. Recreational “sea kayaking,” as noted above developed in the 1970s and was one of the primary visitor uses in Glacier Bay. Visitors brought their own kayaks, rented them at Bartlett Cove or Gustavus, or participated in guided trips operated by concessioners. Alaska Discovery, a major guiding company in Glacier Bay N.P., was one of Southeast Alaska’s premier backcountry travel companies. Its business at Glacier Bay was

<sup>RRRR</sup> The period would be extended twice.

established in 1972 with Gustavus residents Hayden and Bonnie Kaden as principals. In 1986, the Kadens split from Alaska Discovery and formed Glacier Bay Sea Kayaks.

If there was one business group in Southeast Alaska that one would have instinctively thought would be opposed to commercial fishing in Glacier Bay, it would likely have been the kayakers. This was not the case, however. Although there were certainly some in Southeast Alaska who favored ending commercial fishing in Glacier Bay, the strong support of local kayaking interests for the continuance of commercial fishing at historical levels showed the relative unity that many Southeast Alaskans felt in opposing the NPS's efforts to end commercial fishing in Glacier Bay.

Though there were exceptions, local kayaker operators generally seemed to have little problem with commercial fishermen, and some, uneasy in the wilderness, even appreciated their presence. The assistance of power vessels with radio communications could be very handy should an emergency arise. Out of generosity and perhaps a desire to promote good relations, Dungeness crabbers occasionally offered kayakers enough crab for a meal. There was, however, occasional irritation among kayakers over engine noise and occasional loud music that emanated from commercial fishing boats, as well as the high concentrations of Dungeness crab buoys in the Beardslees. Even Senator Frank Murkowski acknowledged the potential for conflict between commercial fishermen and kayakers in Glacier Bay.<sup>710</sup>

Among local kayak businesses, the evidence of unequivocal support for commercial fishermen is contained in two letters written to Jim Brady in 1997. The owners of Glacier Bay Sea Kayaks wrote the following in response to the proposed rule:

We are writing to express our support of historic levels of commercial fishing in Glacier Bay National Park. We believe our comments will be of value to you since we have been serving the independent kayaker as the concession service for kayak rentals in Glacier Bay since 1978.

As an historical operator, we cannot report a single negative comment about commercial fishing in Glacier Bay from the hundreds of clients we have served annually for

the past nineteen years. Their reaction towards fishing in Glacier Bay has been quite the opposite; we have had many rental customers inquire as to where they might be able to see fishing boats while kayaking in Glacier Bay. These backcountry visitors are unoffended by Glacier Bay's small scale commercial fishing and, in fact, have expectations to see the small fishing boats in Glacier Bay because they consider it part of their visitor experience...

It has been the aid that fishermen have provided on occasion to lost kayakers in the Beardslee Islands that we have especially appreciated over the years. Despite the maps and thorough orientations that are provided, more than once day paddlers have become disoriented in the maze that is the Beardslees, but have been pointed in the right direction by fishermen.

As a commercial operator in the Park serving the needs of the independent kayaker, we feel strongly that there has never been a conflict between the backcountry visitor's use of the Park and commercial fishing. We advocate continued historical levels of commercial fishing in Glacier Bay.<sup>711</sup>

The folks at Alaska Discovery were of a like mind. Ken Leghorn and Susan Warner stated that they wished to

reiterate Alaska Discovery's support of historic levels of commercial fishing in Glacier Bay National Park. In the 25 years in which we have operated in the Park, we have not had one single negative experience between our guided groups of kayakers/campers and any commercial fishing operation. We seldom have any interaction or even a sighting of a commercial fishing boat. When an interaction does occur, it has always been positive. Our customers and guides tend to view commercial fishing as a non-intrusive, 'charming' part of the Alaska water experience. We also know that fishermen have



from time to time helped aid or rescue campers.

Sometimes I hear the allegation that commercial fishing is incompatible with kayak/camping use of the Park. I wish to set our record straight, that at least as far as Alaska Discovery is concerned there is not a conflict. We believe there should be a way to accommodate continued low levels of commercial fishing in Glacier Bay.<sup>712</sup>

There must have been at least occasional dissatisfaction among Alaska Discovery's clients with commercial fishing in Glacier Bay, because at a public meeting on commercial fishing in Glacier Bay early the following year Leghorn stated that "guides can set the stage for how a visitor reacts—those guides that know the commercial fisheries and how/what he says regarding the type of vessels can influence expectations and biases are based on that."<sup>713</sup>

The proposed rule rang alarm bells in the offices of Alaska's U.S. senators. To neutralize the rule, at least in part, Senators Stevens and Murkowski co-sponsored legislation in July 1997 (S. 1064) that would permanently allow trolling, long-lining, and pot and ring net fishing in Glacier Bay proper.<sup>714</sup> Dungeness crab fishermen who had fished in the Beardslee Islands for 10 seasons during the years 1984-1995 and who were reliant upon it for a significant part of their income would be grandfathered into the fishery. Upon retirement, they would be able to transfer their rights to one successor. A provision of the legislation would have allowed the Secretary of the Interior to force a successor to relinquish his permit by paying him an amount equal to his expected lifetime income from the fishery.<sup>715</sup> Three fishermen—Charlie Clements, Otto Florschutz, and Tom Traibush—would have certainly qualified under the bill's provisions, and possibly several others would have as well. For cosmetic purposes, the legislation would have also designated Glacier Bay proper as the "Glacier Bay Marine Fisheries Reserve."<sup>716</sup>

In his floor statement introducing the bill, Senator Murkowski said that "there is no biological reason, none whatsoever, for restricting commercial fishing activity anywhere in the park. The fishery resources are healthy, they are diverse, they are closely monitored by

the State of Alaska Department of Fish and Game, and they are very carefully regulated." He then provided a very local perspective on the issue:

in the grand scheme of things, and recognizing consideration of the Nation's economy, these fisheries are small potatoes. But to the fishermen, the natives who depend upon them, to the families of small remote communities in which they live, these fisheries are of the utmost importance. They are harm free. And those who partake in them deserve this Government's help, not the destruction of their simple lifestyle.<sup>717</sup>

The NPS, in reaction to the bill's submission, contacted an aide to Senator Murkowski about the possibility of working out something together, but was informed that Murkowski now had no interest in that approach, and was unlikely to be at all conciliatory toward the NPS.<sup>718</sup> A hearing on the legislation before the Senate Committee on Energy and Natural Resources was scheduled for October 8 in Washington, DC.<sup>719</sup>

In October 1997, the NPS extended the proposed rule's public comment deadline from October 15, 1997 to June 1, 1998.<sup>720</sup> Part of the reason for doing so was the rekindling of the Glacier Bay Working Group, which had been initially formed in 1993 and re-formed in 1995. It was the NPS staff at Bartlett Cove's emphatic goal in late 1997 to "Resolve the commercial fishing issue in 1998!" The uncertainty of the current situation, it said, was "inherently untenable for all concerned, particularly fishermen needing to plan their lives."<sup>721</sup> In fact, the issue had by this time dragged on for so long that it seemed to many in the commercial fishing industry that the issue might never be resolved.

### **Mission Impossible: Seeking a Broad Consensus**

Although the Federal Advisory Committee Act prevented the NPS itself from holding stakeholder meetings without going through a lengthy process, no such constraint prohibited ADF&G from doing so. Rob Bosworth, deputy commissioner of ADF&G, organized the Glacier Bay Working Group. According to an optimistic Jim Brady, the goal of the

group was to find “substantial agreement on key issues.”<sup>722</sup> Some referred to this goal as the “Alaska Solution.”<sup>723</sup> In recognition of the group’s efforts and to give it time to work, Senator Murkowski, at the request of the State of Alaska and others, rescheduled the hearing on S. 1064 from October 8, 1997 to February 26, 1998.<sup>724</sup>

The prospects for an agreement among stakeholders were grim. Despite the efforts of individuals such as Bart Koehler at SEACC to forge one, a compromise between the national environmental groups that demanded an end to commercial fishing in Glacier Bay and the fishermen who would pay the price with their livelihoods was highly unlikely. The NPS rulemaking process was nevertheless grinding forward, and the meetings might help to define the parameters of a possible legislative solution.

Almost simultaneous with the initial work group meetings, the NPS sponsored three public workshops in Juneau (November 1997, January and February 1998). The purpose of the workshops was to increase public understanding of the Glacier Bay commercial fishing issue and to serve as a forum for public discussion of the legal, policy and resource issues associated with commercial fishing in the park. David Hanson of Anchorage-based ARKTOS Associates was contracted by the NPS as a neutral, third-party facilitator who would “enhance our ability to talk to one another.”<sup>725</sup> Hanson specialized in land, natural resource, environmental, and public policy mediation and facilitation. Presentations were made and discussions held on a number of facets of the fishing issue, including NPS and state objectives, the status of the rulemaking process, and Glacier Bay N.P.’s fisheries. Though he may have been less sanguine privately, Supt. Brady publicly hoped the workshops would result in “an enduring solution reflecting substantial public agreement on key issues.”<sup>726</sup> He later characterized the meetings as “difficult, often intense and protracted.”<sup>727</sup> The presence at all of the workshop (and work group) meetings of Molly Ross, special assistant to the Assistant Secretary of the Interior for Fish and Wildlife and Parks, was an indication that the DOI hierarchy was paying close attention to, if not trying to control, the issue. Brady later remarked with humor that Ross was there, in part, to “keep a lid on Brady.”<sup>728</sup>

The first NPS workshop meeting was held on November 6, 1997. Ross welcomed the group, noting that one of her functions was to “bring to the discussion a national perspective that cannot be ignored in managing one of the best and most valued national parks.” She explained the NPS’s national policy and perspective on the issue, noting that the NPS’s “protection ethic” for terrestrial ecosystems was just beginning to be applied to management of marine ecosystems.<sup>555</sup> Ross said that from a policy perspective, commercial fishing was not allowed. Glacier Bay’s appropriate role, from a national law and policy perspective, was “to provide a protected marine ecosystem free from significant harvest.” Ross added, however, that when there were compelling reasons for doing so, some flexibility could occur in the application of national policy. Glacier Bay N.P., said Ross, had a “schizophrenic history” in regard to the legality of commercial fishing and the enforcement of fisheries-related regulations. Ross also pointed out that among the interests that must be considered in resolving the commercial fishing issue were the many people who would never visit Glacier Bay, but who cared about and were interested in it.<sup>729</sup>

The first work group meeting was held in Juneau on November 7, the day after the NPS public workshop. The stated purpose of the meeting was very basic: to “Identify and clarify issues that must be resolved in any lasting solution; discuss adequacy of existing mechanisms for achieving that solution; develop a process that will lead to definition of and agreement on a solution.”<sup>730</sup> The meeting was facilitated by Sally Gibert, of the Office of the Governor. Because of its involvement in the rulemaking process, the NPS could not participate, but Jim Brady and Molly Ross were at the table as ex-officio members. Rob Bosworth, deputy commissioner of ADF&G, represented the State of Alaska. Groups represented were: Allied Fishermen of Southeast Alaska (AFSA), Citizens’ Advisory Committee on Federal Areas (CACFA), Hoonah Indian Association (HIA), Sealaska, Friends of Glacier Bay (FOGB), Southeast Alaska Conservation Council (SEACC), National Parks and Conservation Association (NPCA), Sierra Club, and Alaska Wildlife Alliance (AWA).

<sup>555</sup> Marvin Jensen liked to point out the inconsistency of the NPS prohibiting a hunter from killing a 300-pound bear in the park but allowing a sport or commercial fisherman to kill a 300-pound halibut.

The work group member most persistent in opposing the NPS's proposal to end commercial fishing in Glacier Bay was Jev Shelton. An intelligent and articulate Harvard graduate who earned his living as a commercial fisherman, Shelton had first fished for halibut in Glacier Bay in the mid-1970s. At the work group meetings, he represented the United Southeast Alaska Gillnetters Association (many gillnetters, like Shelton, also fished for halibut), and he worked closely with AFSA. For him, commercial fishing in Glacier Bay was an economic as well as a philosophical issue. Of the work group members, he was probably the most convinced that the NPS did not have a solid legal argument for closing Glacier Bay to commercial fishing. Shelton maintained that commercial fishing actually enhanced park values in Glacier Bay by making the park unique, accurately noting that fishermen had been working the bay for more than 100 years and fish stocks were healthy. Shelton said that he never heard park visitors complain about commercial fishermen, and he liked to point out that fishermen sometimes assisted people who had become lost or stranded in Glacier Bay's backcountry.<sup>731</sup> To bolster his case, he was able to point to a June 1997 *Consumer Reports* article that rated Glacier Bay as the nation's top national park.<sup>732</sup> Shelton had little desire to compromise, and maintained a narrow personal definition of what a compromise might entail. He was willing to entertain the possibility of spatial or temporal restrictions on commercial fishing, such as prohibiting commercial fishing in specific areas of Glacier Bay or restricting the activity during the visitor season. To Shelton, however, a phase-out was not a compromise, but an unacceptable termination of a fishery.<sup>733</sup> But the hard reality was that, absent compromise legislation that would almost certainly involve phase-outs, the NPS/DOI was prepared to attempt eliminating commercial fishing from Glacier Bay on its own terms. Some who attended the Glacier Bay work group meetings considered Shelton to be the most intransigent of those opposed to ending commercial fishing in the bay. Others recall him as the individual who "got it right" from the beginning.

In 1998, Senator Murkowski noted that "Every time we compromise on a fishery matter, we lose."<sup>734</sup> So far as Glacier Bay was concerned, he had a valid point: for the fishermen in Glacier Bay, there was nothing to gain

in the ongoing negotiations. All they could do was work to lose less or to prolong the process in the hope that political change (the Monica Lewinsky scandal was brewing) would force the NPS and DOI to abandon its effort.

Not long after the November 7 meeting, Rob Bosworth, two fishermen (Jev Shelton and Doug Ogilvy), plus Dale Kelly and Bruce Weyhrauch of the Allied Fishermen of Southeast Alaska and Bart Koehler of the Southeast Alaska Conservation Council, journeyed to Washington, DC to lobby on the Glacier Bay commercial fishing issue. Among those contacted were staff in Senators Stevens's and Murkowski's offices, Molly Ross, and the staff of the President's Council on Environmental Quality. According to Bosworth, the group learned that any unilateral attempt by Alaska's congressional delegation or the DOI to impose a solution on the Glacier Bay issue was not likely to succeed. The work group could best serve the process by seeking to reach consensus on as many facets of the Glacier Bay issue as possible. The inclusion of such consensus points would increase the likelihood of success of any attempts at legislation. Bosworth thought the trip was worthwhile for the contacts made.<sup>735</sup>

On December 15, a day prior to the second meeting of the work group, Beardslee Islands Dungeness crab fishermen met with NPS and State of Alaska personnel and facilitator Dave Hanson to discuss various options for the Beardslee Islands, including a continuation of the fisheries as part of a research program, variations of grandfathering, and buyouts.<sup>736</sup> The fishermen were asked to respond to the proposals before the next work group meeting, but as yet they had no consensus among themselves on what they were willing to give up and to receive in turn.<sup>737</sup> Chip Dennerlein, who had represented the National Parks and Conservation Association in Glacier Bay commercial fishing discussions as early as 1993, endorsed the idea of buyouts for Dungeness as well as Tanner crab fishermen in a December 1997 letter to fellow work group members.<sup>738</sup> Possibly influenced by Dennerlein's position, the DOI soon thereafter drafted legislation for a buyout as well as a "jobs program" for affected Dungeness and Tanner crab fishermen.<sup>739</sup> The draft was by no means a comprehensive solution to the Glacier Bay commercial fishing issue, and it never really saw the light of day.

The second meeting of the work group was held in Juneau on December 16. The meeting's purpose was to review available information on Glacier Bay's commercial fisheries and to discuss possible consensus points.<sup>740</sup> Comprehensive presentations were made by ADF&G personnel on the history of Alaska's commercial fishing industry, the state's fisheries management philosophy and practice, and the individual fisheries of Glacier Bay N.P. Bart Koehler and Greg Streveler, representing SEACC, presented a proposal that ranked individual fisheries by their effect on park visitors and resident species, and provided a matrix of options that emphasized simplicity.<sup>741</sup> (In ranking the fisheries, the winter troll king salmon fishery, which took place in the off season and targeted a transient fish population, was the least problematic. The king crab fishery, because it targeted what Streveler termed "small vulnerable resident populations," was the most problematic.<sup>742</sup>) Present also at this meeting was National Parks and Conservation Association's Chip Dennerlein, who also represented the various viewpoints of a coalition of national conservation groups.<sup>743</sup> Dennerlein presented his organization's view of how commercial fishing might be phased out of Glacier Bay, and thought the work group was "ready to focus on detailed elements of a potential resolution."<sup>744</sup> One important element of a compromise was falling into place: Dennerlein suggested that Glacier Bay N.P.'s outer waters could remain open, subject to a "cooperative conservation plan." As well, Anthony Crupi, of the Alaska Wildlife Alliance—almost certainly the most preservation-oriented group represented at the meeting—stated his group's willingness to consider continued commercial fishing in Glacier Bay N.P.'s outer waters.<sup>745</sup> The sanctioning of this consumptive activity in a national park by these groups was in itself extraordinary, and perhaps representative of what they were willing to sacrifice to accomplish their chief goal—the elimination of commercial fishing from Glacier Bay proper, in particular the bay's wilderness waters.

On January 8, 1998, the NPS held a second public workshop in which Molly Ross presented the DOI perspective on the Glacier Bay issue and the status of the ongoing rulemaking process. She mentioned that compensation for losses incurred was part of the phase-out package, and noted that of the roughly 400 public comments on the Glacier Bay issue received

before October 15, fully 95 percent either supported the NPS proposal or desired something more restrictive.

Presentations were also made on past and ongoing halibut research, and general information was provided on other commercial fish resources in Glacier Bay.<sup>746</sup> The meeting's main presentation, however, was by National Marine Fisheries Service research fisheries biologist Jim Bohnsack, who spoke on the functions and benefits of marine reserves. Worldwide, less than one percent of the total area of the seas is protected as marine reserves, and as little as .01 percent is protected from all fishing.<sup>747</sup> Bohnsack noted that fisheries around the world were collapsing, and just because Alaska didn't currently have a problem didn't mean one wasn't coming. The public's focus on Glacier Bay as a marine reserve increased that month when more than 1600 scientists and marine conservationists from 70 countries voiced their concern for the oceans by signing a statement titled *Troubled Waters: A Call to Action*. The statement, an initiative of the Seattle-based Marine Conservation Biology Institute (MCBI), cited the degradation of the global marine environment and called for immediate action that included increasing the number and effectiveness of marine reserves. The head of MCBI, Elliot Norse, was working hard to make Glacier Bay a marine reserve. As some had claimed in the past, establishing Glacier Bay as a marine reserve would set a precedent that would make it easier to protect marine resources worldwide.<sup>748</sup> It was later pointed out that fishery managers in Alaska didn't know what unfished populations looked like because they didn't exist, and that less than one-tenth of one percent of U.S. marine waters were closed to commercial fishing. With sufficient support for research, a Glacier Bay marine reserve could benefit management and protection of important fisheries throughout the North Pacific.<sup>749</sup>

A somewhat contrarian but practical point of view of Glacier Bay as a marine reserve was that such a designation would be largely an ideological action and not as useful for conservation or scientific purposes as would an area that had been carefully studied with specific goals in mind.<sup>750</sup>

For its part, the Allied Fishermen of Southeast Alaska (AFSA) did not support the concept of marine reserves beyond Glacier Bay's existing wilderness waters. The group

was in favor of no fishing in wilderness waters, with the exception that the Beardslee Islands Dungeness crab fishery should continue.<sup>751</sup>

The day after the NPS's second meeting, January 9<sup>th</sup>, was the third meeting of the work group. A summary of the meeting contained Rob Bosworth's reiteration of the importance of their work:

I believe the best chance we have of reaching a satisfactory and politically stable solution is ... to keep working together here in Alaska. There is a big risk of this issue being taken over by politicians who are not really interested in the people of Southeast Alaska and maybe not even in ... the resources of the park. I'm constantly advised by people who spend a lot of time in DC that if this group goes back there ... with no position or an overly general position, then we will give up a lot of control over the final outcome. If we leave a vacuum, it will be filled.<sup>752</sup>

At the meeting, the group reviewed and discussed options for resolving the Glacier Bay commercial fishing issue, including proposals by Beardslee Island Dungeness crab fishermen. If and when the NPS issued its final rule, commercial fishing in the Beardslee Islands would be terminated without delay, and those fishermen dependent on the Beardslees would suffer economically almost immediately. Tom Traibush suggested that the core group of Beardslee Islands Dungeness crab fishermen be allowed to continue for 50 years—likely longer than the lifetime tenancy he had suggested to Supt. Brady through his attorney two years earlier. The closure of the Beardslees to commercial fishing was at the top of the NPS's list as well as that of the national environmental groups, and the NPS countered Traibush's proposal with a proposal to phase out the fishery in five to seven years.<sup>753</sup> Traibush's fellow fisherman, Otto Florschutz, then made a simple statement that permanently changed how the Beardslee Island crab fishery would be terminated. Florschutz told Brady and Ross that if they wanted him gone, the NPS should buy him out, and that a component of the buyout should involve the purchase and retirement of Dungeness crab limited entry permits to reduce the displacement effects on

an already saturated fishery. His suggestion was not new, but its time had come. From that time on the Beardslee Island Dungeness crab fishermen would not be phased out; they would be bought out. Though there was some residual support for a phase out, future discussions mostly focused on how a fair buyout program might be structured. At least one environmental group, the National Parks and Conservation Association, had no problem with buyouts.<sup>754</sup>

The NPS remained invested in the working group meetings in part to hold off Senator Murkowski's proposed Glacier Bay legislation, which it found highly objectionable. But even though the rulemaking process was continuing, the NPS actually preferred a legislative solution. As mentioned earlier, statutes are more difficult to change than regulations, and with legislation Congress would have to absorb any criticism that resulted. Jim Brady thought that legislation might be needed in the near future to codify an "agreed-upon, coherent and compatible mix of values and uses that respects both the national park and local traditional fishing."<sup>755</sup>

An NPS public workshop at Juneau on February 3, 1998 preceded the work group meeting. At the workshop, which was planned to provide an opportunity for public discussion of the Glacier Bay issue, the NPS explained the content of the upcoming environmental assessment, a characterization of Glacier Bay's current fisheries, some material on patterns of visitor use in Glacier Bay, and the role of fisheries research in the park.<sup>756</sup>

The fourth work group meeting, on February 4-5, 1998, was also held in Juneau. Its purpose was to "find acceptable 'middle ground' with regard to commercial fisheries activities in Glacier Bay."<sup>757</sup> The group was unable to do so, though at this time there was general consensus for a short phase-out period and buyout of the Dungeness crab fishery.<sup>758</sup> On a personal note, Otto Florschutz commented on how difficult it was for him to leave Glacier Bay at the end of a season not knowing if he would be able to fish the following year.<sup>759</sup>

One effect of the work group's efforts was that Senator Murkowski eased somewhat his push for legislation pending the results of the meetings. The hearing on S. 1064 scheduled for February 26 was indefinitely postponed. The reason for the postponement seemed to be that Murkowski wanted Bill Woolf, his staff member who was most knowledgeable

of commercial fisheries, to handle the issue. Woolf was on medical leave and due back on the job shortly.<sup>760</sup> Although pushing the legislation may have provided some satisfaction to Senator Murkowski, it was a futile effort. His Glacier Bay bill was considered “anti-environment,” and stood little chance of making it through the Senate, let alone being signed into law by President Clinton.

The fifth meeting of the work group was held on March 13. After this meeting it was reported that the group had reached “general agreement” on two points: (1) there would be no new or expanding fisheries in Glacier Bay N.P., and (2) wilderness waters would be closed to commercial fishing, except that Dungeness crab fishermen in the Beardslee Islands would be phased out over five to fifty years, with an option to be bought out.<sup>761</sup> A follow-up meeting was scheduled for March 23, but was postponed until June 15 to allow fishermen more time to reach a consensus position of their own.<sup>762</sup> The fishermen’s representatives, it seemed at the time, were caught between the proverbial “rock and a hard spot.” They did not want to be seen as the ones who “sold out” Glacier Bay, but by taking a hard line and not accepting the latest proposals, they risked losing it all.<sup>763</sup> Bill Woolf ridiculed the process, charging that it was in its entirety being orchestrated from Washington, DC, that Molly Ross and Chip Dennerlein were in consort establishing the parameters for discussion. According to Woolf, anything that Ross and Dennerlein said they wanted was treated as non-negotiable. In contrast, anything the fishermen said was important to them was negotiable.<sup>764</sup> In the absence of consensus, however, the NPS was likely to proceed unilaterally with its efforts to ultimately close Glacier Bay to commercial fishing.

A meeting of some work group members was held on May 2-3, 1998. One of the issues discussed was the establishment in Glacier Bay of a “core protected area,” which was defined as “a minimally disturbed ecosystem where researchers can observe and study unique, exceptional natural and successional processes.”<sup>765</sup> Little agreement was reached, but, a “Working Group on How to Define and Implement Sanctuary Values” and “Working Group on Options for Compensation” were established. The latter was led by Rob Bosworth of ADF&G, and it was charged with identifying and reporting to the main working group the “options for compensat-

ing fishermen who suffer economic losses as a result of closures of fisheries in Glacier Bay.”<sup>766</sup> Later that month, Bosworth sent notice to work group members about scheduling a meeting in June. Bosworth must have been losing faith in the group’s prospects for success: he suggested that the meeting should be about the future of the work group, whether it would be possible for the group to actually arrive at a consensus position.<sup>767</sup>

On April 10, 1998, a month before Superintendent Jim Brady retired, the NPS released its 388-page Environmental Assessment (EA) of the effects of the proposed rule and four alternatives, one of which was a “no-action” alternative. The proposed action was similar to the proposed rule published a year earlier: fishing in wilderness waters would terminate “at the time the regulations go into effect,” but with allowance for up to seven Dungeness crab fishermen to continue fishing in the Beardslee Islands (wilderness) during the non-visitor season as part of a 5 to 7-year study program. Commercial fishing in non-wilderness waters of Glacier Bay proper would be allowed to continue for 15 years, and commercial fishing would be authorized to continue in perpetuity in the non-wilderness outer waters of Glacier Bay N.P. under a cooperative fisheries management plan developed by the NPS and the State of Alaska.<sup>768</sup>

Public hearings on the proposed rule were scheduled by the NPS in six Southeast Alaska communities (Elfin Cove, Gustavus, Hoonah, Juneau, Pelican, and Sitka) as well as Seattle. At the request of residents, hearings were later held in Wrangell and Petersburg.<sup>769</sup> Afternoon open houses preceded the hearings and provided an informal opportunity for individuals to discuss commercial fishing in Glacier Bay on a one-on-one basis with NPS officials. A court recorder was present at the open houses for those who might want to testify. The formal public hearings were structured around recording public testimony.<sup>770</sup>

Despite Brady’s earlier assertion to Frank Rue that the EA would provide a comprehensive analysis of the economic effects of the proposed rule, this was hardly the case. With only limited input from people qualified to do economic analysis, it was done mostly by the staff at Glacier Bay.<sup>771</sup> The document contained only general statements. No figures were presented to quantify specific effects.

According to the EA, most fishermen phased out of Glacier Bay proper over 15 years “would be able to successfully prospect new areas and adjust their operations accordingly.” The exceptions were those Dungeness and Tanner crab fishermen who were reliant on the Beardslee Islands, because they would have difficulty re-establishing themselves in locations already fully-utilized by other fishermen. The EA also acknowledged the adverse effect the out-migration of displaced Glacier Bay fishermen would have on fishermen who had not fished in Glacier Bay or even intended to fish there. The influx of displaced Glacier Bay fishermen into areas left open would result in a reduction in the average catch of all.<sup>772</sup> The NPS concluded that the effect of its proposed action on the Icy Strait area would be to reduce the number of active fishermen as well as the “diversity and economic viability of the commercial fishing lifeway.”<sup>773</sup>

The EA acknowledged that it was difficult to determine the extent to which the phased out closure of Glacier Bay proper would affect communities in Southeast Alaska. The proposed action was thought unlikely to change the character of Gustavus, but it would have a noticeable effect on Hoonah. Sympathy was evident in the NPS’s assessment: “... the closure of Glacier Bay proper to commercial fishing would add more stress to an already fragile economy, contributing to the social ills typically associated with economic uncertainty and a loss of hope for the future.”<sup>774</sup>

Reaction to the document, and the proposed action, was swift and strong. The United Fishermen of Alaska (UFA)—no fan of the NPS—wrote then that the document “reveals a lack of understanding of Alaska’s fisheries and management practices,” and that the analysis of environmental and socio-economic impacts was “severely flawed.”<sup>775</sup>

Commenting on the NPS’s proposal, Senator Murkowski was particularly exercised. He characterized the proposal as “simply unacceptable” and “mindless,” adding that the regulations should be ignored if they go into effect. The issue was, in his mind, “non-negotiable,” and he urged fishermen to “rise up and testify against the regulations and in support of their traditional livelihoods during public hearings.”<sup>776</sup> Fishermen at the Juneau hearing were reported to be “outraged.”<sup>777</sup>

As noted above, Hoonah, where commercial fishing was of cultural as well as economic importance, stood to lose a lot if Glacier Bay N.P. was closed to commercial fishing. The Hoonah Indian Association was one of the groups that worked to keep Glacier Bay open. Its efforts to do so were fundamentally based on an optimistic but flawed interpretation of the 1980 Alaska National Interest Lands Conservation Act’s (ANILCA) provision to cause the “least adverse impact possible on rural residents” who depend on specified set aside lands for subsistence uses. Glacier Bay N. P., however, was not among those specified lands.

A liberal definition of “subsistence uses” also figured into the association’s reasoning. “Subsistence uses” were defined by Congress in ANILCA as “the customary and traditional uses by rural Alaska residents of wild renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.”<sup>778</sup> The Hoonah Indian Association maintained, however, that “our inherent customary and traditional and commercial fisheries are not separate.”<sup>779</sup>

In addition to the association’s flawed interpretations of ANILCA, its requests to keep Glacier Bay open to commercial fishing were often unrealistic because they included language that favored continued commercial fishing by Hoonah Tlingits to the exclusion of others. Such requests were patently discriminatory and could not be seriously considered by the federal government. One such request was included in HIA’s October 1998 “Huna Tlingit Culture Fishing Environmental Assessment.” The document was roughly modeled after the NPS commercial fishing environmental assessment and misleadingly portrayed as having been prepared jointly by the HIA and NPS. In the document, HIA proposed that Hoonah Tlingits be granted their “indigenous right to their historical cultural fishing seasons and methods within the bay.” The proposal also included an unlimited exemption for Hoonah Tlingits to fish commercially in Glacier Bay’s wilderness waters.<sup>780</sup>

On June 1, 1998, at the request of the State of Alaska and Senator Murkowski’s office,

the public comment period on the April 1997 proposed rule was once again extended. The 169-day extension, which included comment on the EA, terminated on November 15, 1998.<sup>781</sup> This second extension of the comment period was intended to give the public, particularly fishermen, more time to comment, and would provide for consideration in the regulations of anything the Glacier Bay work group might accomplish.<sup>782</sup>

The fishing season was well underway on June 15, and only one fisherman member, Jev Shelton, was present at the meeting of the Glacier Bay Work Group that day.<sup>783</sup> Proposals were presented by the National Parks & Conservation Association (NPCA), the Allied Fishermen of Southeast Alaska (AFSA) and the Southeast Alaska Conservation Council (SEACC). Each of the proposals had one thing in common: the outer waters of Glacier Bay N.P. would remain open to commercial fishing (except for scallop dredging, to which the NPCA had an objection) in perpetuity.<sup>TTTT</sup> The NPCA's proposal was significant in that a national environmental organization stated its approval of commercial fishing operations in a national park.

Within Glacier Bay proper, AFSA and the NPCA agreed that a buyout of the Dungeness crab fleet was a viable option, but consensus on the broader commercial fishing issue remained elusive. NPCA wanted all commercial fishing, save the winter king troll salmon fishery, phased out, while AFSA wanted commercial fishing to continue, but was willing to make some concessions regarding seasons and closed areas.

Three committees were appointed at this meeting: Cooperative Conservation Strategies, Citizens Advisory Board, and Dungeness Crab Fishery Alternatives. Members of the three committees were directed to work on their respective issues prior to the work group's next meeting.<sup>784</sup> The work group agreed to a final effort in October or November, after the summer fishing season and before the closure of the comment period on the proposed rule.<sup>UUUU</sup><sup>785</sup>

Unbeknownst to those in attendance, the June meeting was the final gathering of the Glacier Bay work group. The effort to resolve the Glacier Bay issue would shift to the politi-

cal arena before the fall meetings. The issues that ultimately divided the stakeholders, as some observed later, were "narrow, but deep."<sup>786</sup>

Although the work group failed to reach a compromise, SEACC and the commercial fishing groups continued to address the issue among themselves and came to an agreement that would have included a buyout of Beardlee Island Dungeness crab fishermen, a cap on the number of commercial fishing boats in Glacier Bay proper, and the establishment of marine reserves in Geike Inlet, several small portions of the West Arm, Wachusett Inlet, and nearly all of Muir Inlet. Instead of a phase-out, commercial fishing in Glacier Bay proper would continue for 15 years, after which it would be re-evaluated. Commercial fishing would continue in perpetuity in the outer waters of Glacier Bay N.P.<sup>787</sup> Their effort was for naught, because the time for compromise, at least within Southeast Alaska, had ended.

#### The "Resolution" of the Glacier Bay Issue

Glacier Bay Superintendent Jim Brady retired from the NPS in May 1998. He had hoped to remain in his position until sometime the following spring, but was unable to do so due to a family emergency. In mid-July, the NPS announced that his successor would be Tomie Lee, who had previously been chief ranger at Utah's Glen Canyon National Recreation Area. Lee knew little of commercial fishing, but that wasn't supposed to matter: upon accepting the job, she was informed that the commercial fishing issue was close to being resolved, and there was no need for a new person to become involved.<sup>788</sup> She would learn differently.

In Washington, DC, the Glacier Bay commercial fishing issue was quickly becoming a significant factor in the political arena. In June 1998, Vice President Al Gore had warned the Republican-controlled Congress that the White House would tolerate no anti-environment riders tacked onto spending bills, specifically citing any that might challenge the planned phase-out of commercial fishing in Glacier Bay.<sup>789</sup> "Veto bait" was the term administration officials used to describe such riders. Gore's threat was not idle. In 1995 the Republican-controlled Congress had gambled that

<sup>TTTT</sup> Scallops are "dredged" by dragging along the seafloor a heavy steel frame to which a chain mesh bag is fastened.

<sup>UUUU</sup> Once the comment period was closed, the NPS avoided having any discussions with any one group that would be construed as having undue influence.



President Clinton would not shut down parts of the federal government by vetoing critical appropriations bills that contained riders (one relating to Alaska's Tongass National Forest) that the White House found objectionable.<sup>790</sup> It was a costly gamble: Clinton vetoed the bills, and the public blamed the Republicans in Congress for the shutdown. The Republican leadership in the 105<sup>th</sup> Congress wanted to avoid a repeat of the 1995 debacle.

Undeterred by White House threats or the concerns of his Republican colleagues, Senator Murkowski the following week attached a rider to the must-pass Interior Appropriations Bill. The purpose of that rider was to prevent the NPS from issuing new regulations that would ban commercial and subsistence fishing within Glacier Bay N.P.<sup>791</sup> Senator Stevens supported the rider.<sup>792</sup> The *New York Times* included mention of the rider in an editorial titled "Mugging the Environment."<sup>793</sup> Concerned that Murkowski's action might jeopardize the appropriations bill, the Senate leadership asked Stevens to work out a solution to the Glacier Bay commercial fishing issue that would remove Murkowski's rider.<sup>794</sup>

On September 21, 1998, the compensation work group (part of the overall Glacier Bay Working Group) that had been established the previous May met in Gustavus at the home of Charlie Clements and Deb Woodruff. Four fishermen were present, as were Tomie Lee and Randy King from the NPS. Rob Bosworth and Jeff Hartman of ADF&G were in communication via telephone, as were two additional fishermen. The group discussed the specifics of a buyout of Dungeness crab fishermen, including eligibility criteria and the purchase of permits, crab pots, and vessels used in the fishery. The fishermen present agreed that eligibility should require a six to ten year fishing history in Glacier Bay between the years 1987 and 1996, as well as possession of a valid ADF&G Dungeness crab fishing permit as of August 15, 1998. They thought similar criteria should be used to determine the eligibility of processors for compensation.

Several days later Tom Traibush sent Randy King a letter in which he estimated that a congressional appropriation of at least \$15 million would be needed to fairly compensate Dungeness crab permit holders, crewmem-

bers and processors. (Traibush noted that the losses of crewmembers had not been addressed during the September 21 meeting.) Traibush thought six permit holders, three processors, and perhaps two crewmembers would qualify for compensation. The main intent of Traibush's letter, however, was not to reiterate what the fishermen had agreed upon or to speculate how much compensation might be needed. What he wanted was the NPS to make an offer and to assure fishermen that they could continue fishing until a fair resolution was reached. He signed his letter as a representative of "The Fishers of the Dungeness Crabber's Fair Compensation Committee." Copies were sent to, among others, Alaska's congressional delegation.<sup>795</sup>

By this time it was recognized that funds for a buyout were not available from either the NPS or the state. Compensation would have to be provided by a special congressional appropriation or a third party.<sup>796</sup> At some point, the fishermen were apparently assured by Senator Stevens's office that securing a congressional appropriation was "not a problem."<sup>797</sup> Most of the same group met again on October 8 to discuss how values for permits, crab pots and vessels would be determined.<sup>798</sup>

Senator Stevens was well aware that the NPS's proposed regulations were close to being finalized and, absent Congressional action, would likely take effect in 1999. He was also frustrated that the issue had drawn out for so many years, and he wanted to settle it as best he could. On top of this, he was under pressure from his Republican colleagues in the Senate to have Senator Murkowski's rider removed.

As the fall of 1998 began, Stevens directed his staff member, Christine Schabacker, to negotiate a legislative settlement with the DOI. Lisa Sutherland, Senator Stevens's aide in the Senate Appropriations Committee office, was also involved. Schabacker and Sutherland, neither of whom was very familiar with the intricacies of the issue, negotiated primarily with John Berry, Assistant Secretary of the Interior for Policy Management and Budget.<sup>vvvv799</sup> Berry was in contact with Randy King and others for technical assistance. Molly Ross was detailed to draft DOI's proposal for legislation.

Despite the fact that Senator Murkowski chaired the Senate Energy and Natural

<sup>vvvv</sup>Trevor McCabe was Senator Stevens's principal aide for commercial fisheries matters.

Resources Committee, which would normally have jurisdiction over the issue, neither Murkowski's office nor that of Representative Young was directly involved in the negotiations. In fact, Senator Stevens's office asked Molly Ross not to have any contact with Murkowski's office while the agreement was being finalized. Nor was the State of Alaska involved. "We had no idea the cleaver was falling," said ADF&G deputy commissioner, Rob Bosworth.<sup>800</sup> Randy King characterized the situation as "very dynamic," the outcome of which he was uncertain.<sup>801</sup>

The compromise agreement was negotiated in less than a week.<sup>802</sup> Broadly speaking, the framework of the negotiations between the DOI and Senator Stevens's office was defined by geography, and the results of their effort included elements of positions taken by the National Parks and Conservation Association and the Allied Fishermen of Southeast Alaska as presented in proposals at the final meeting (June 15, 1998) of the Glacier Bay Work Group. Like the rest of Alaska's Congressional delegation and the State of Alaska, Senator Stevens was focused on the continuation of commercial fishing in the outer waters of Glacier Bay N.P., where about 80 percent (reported biomass) of the park's commercial catch was taken.<sup>803</sup> The NPS, on the other hand, remained focused on the elimination of commercial fishing in Glacier Bay proper.<sup>804</sup>

The Beardslee Islands Dungeness crab fishermen also figured prominently in the negotiations. Their fishery would be terminated, not phased out, and not just the wilderness waters of the Beardslee Islands, but in all of Glacier Bay proper. The DOI and Senator Stevens's office both favored a simple buy-out of those with substantial histories in the fishery. The DOI initially proposed that qualifying individual fishermen be compensated an amount equal to five years of expected lost earnings, based on an average of their individual average incomes from the fishery for the years 1992 through 1997.<sup>805</sup> Several days later it increased that amount to six years of expected lost earnings.<sup>806</sup> This amount was offered by Assistant Secretary John Berry through Molly Ross to the fishermen. At least among the Gustavus fishermen involved, the offer was rejected as too low.<sup>807</sup>

The group apparently made their dissatisfaction known to Senator Stevens's office,

for not long afterward—sometime in early October, 1998—an aide from Senator Stevens's office called the home of Charlie Clements and Deb Woodruff. He wanted to know how much it might cost to buy out the seven or so Beardslee Island Dungeness crab fishermen who met certain requirements for historical participation in the fishery. He suggested a dollar amount (per fisherman) and asked if this amount was acceptable. He then made it clear that time was of the essence. Woodruff contacted Tom Traibush and Otto Florschutz, and together they accepted the offer.<sup>808</sup>

Had Tom Traibush not elevated the issue in prominence in 1996 by employing legal counsel, there may never have been such an offer (see Figure 34). Absent Senator Murkowski's pending legislation to amend ANILCA, the courts would have had no recourse but to force a very willing NPS to terminate commercial fishing in Glacier Bay's wilderness waters, which would have effectively ended the bulk of Glacier Bay's Dungeness crab fishery. Moreover, there was scant support for the Beardslee Islands crabbers among some of their colleagues in the fishing industry. Some thought that the relatively small but locally important fishery could have been used as a bargaining chip—terminated in exchange for more favorable consideration of other fisheries.

Senator Murkowski was furious over the compromise being negotiated without his participation. "That's simply not acceptable," he said in a news release, "Every time we compromise on a fishery matter, we lose. I am just not going to accept a sellout of the rights of Alaska fishermen to earn a living over the long haul."<sup>809</sup> Murkowski also understood that this compromise was going to replace the Glacier Bay rider deemed so offensive by the Clinton administration, that it would be removed for political reasons by his senior Alaska colleague who had, ironically, co-sponsored it.

In November 1998, Murkowski elaborated on the compromise: "I have made no secret of the fact that I think this 'deal' is no deal at all. I believe the state should be clearly managing all these fisheries and that there is no valid reason to close any part of the park to fishing. And although the crab buyout provisions will be acceptable to some of the crabbers, others agree the buyout just isn't adequate compensation for someone's lifestyle and livelihood. Moreover, only the Dungeness crabbers will be com-



Figure 34: Gustavus Dungeness crab fisherman Tom Traibush (courtesy James Mackovjak)

pensated at all, which ignores the impacts on processors, process workers and communities. There is – or at least there should be – more to establishing a fair and equitable fishery closure than just saying, ‘Get Out!’<sup>810</sup>

Murkowski’s principal interest was not in compensating fishermen and others. His interest was ideological: keeping Alaska’s resources available for development, in this case keeping Glacier Bay open to commercial fishing. To that end, Murkowski introduced legislation on October 9. “Come what may,” said the senator, “I will not stand by and allow the existing small commercial fishing operators to eventually be thrown out of Glacier Bay.”<sup>811</sup>

Senator Murkowski’s “Glacier Bay Management and Protection Act of 1998” read:

... commercial fishing shall be allowed to occur in the marine waters of Glacier Bay National Park, except that--

“(1) fishing in Glacier Bay north of a line drawn from Point Carolus to Point Gustavus may be limited to the use of longlining for halibut, the use of pots and ring nets for crab, and troll gear for salmon;

“(2) the waters of Rendu Inlet, Adams Inlet, and the Scidmore Bay-Hugh Miller Inlet-Charpentier Inlet complex shall be closed to commercial fishing; and,

“(3) fishing for Dungeness crab shall be permitted in the Beardslee Islands

and in upper Dundas Bay, but may be limited to the number of individuals who harvested Dungeness crab in either the Beardslee Islands or upper Dundas Bay in 1995, 1996 or 1997.<sup>812</sup>

The free-standing legislation, which would have essentially neutralized the compromise Senator Stevens’s office was negotiating, had little chance of passing in the closing weeks of the 105<sup>th</sup> Congress, but Murkowski vowed to reintroduce it in January and to keep introducing it until it passed.<sup>813</sup> The relationship between Alaska’s senators, usually amicable, was showing a rare fracture.

In mid-October 1998, Senator Stevens, after informing Senator Murkowski of his intentions, deleted Murkowski’s offensive Glacier Bay rider and replaced it with the compromise his staff had negotiated with the DOI. With negotiations on the massive spending package in progress, Senator Stevens withheld his comments on the Glacier Bay compromise.<sup>814</sup> In essence, the compromise stated that the Glacier Bay Dungeness crab fishery was terminated, with a provision that Beardslee Island Dungeness crab fishermen who could meet criteria for past participation would be bought out. Commercial fishing for halibut, Tanner crab and salmon (troll) would be allowed in Glacier Bay proper under a system that “grandfathered” fishermen who could meet certain criteria for past participation. All other fisheries in Glacier

Bay proper would be terminated, and no new or expanded fisheries would be permitted. The outer waters of Glacier Bay N.P. were to remain open to commercial fishing in perpetuity.

The DOI was very pleased with the compromise. Molly Ross, however, wondered in internal discussions whether more should be considered. While the legislation was still pending in Congress, she noted that “With the closures plus wilderness waters in Glacier Bay, we probably have created the world’s largest potential marine refugia (sic). We should think about limiting sport fishing in these closed areas . . .”<sup>815</sup> John Berry cautioned her: “I would do nothing to anger sports fisherman (sic) until we have the entire deal to bed a few years from now. They are important allies and we dont (sic) need them sniping at this.”<sup>816</sup> He added that “ANY mention of sportsfishing will risk souring everything, so we should not have anything on paper – or any discussions that could leak and raise up a sleeping dog.”<sup>www 817</sup>

#### **The Deal, the Reaction to It, and Its Ramifications**

The 4,000-page Omnibus Appropriations Bill (H.R. 4328), which incorporated 8 of 13 annual appropriations measures (including Interior) and totaled \$520 billion, was passed by Congress and signed into law on October 21, 1998.<sup>818</sup> Senator Stevens voted for the measure, Senator Murkowski did not vote. Incorporated in it were Senator Stevens’s Glacier Bay provisions that amounted to a forced (though incomplete) settlement of the Glacier Bay issue, and which set the basic direction that the remainder of the settlement would take. Fundamentally, the legislation:

- mandated that the non-wilderness waters of Glacier Bay N.P. outside Glacier Bay proper remain open to commercial fishing;
- immediately terminated commercial fishing in all wilderness waters of Glacier Bay N.P. (a total of 53,270 acres);
- terminated commercial fishing in the following non-wilderness waters of Glacier Bay proper: Johns Hopkins Inlet, Tarr In-

let, Reid Inlet, Adams Inlet, Geike Inlet, and most of Muir Inlet (a total of 57,960 acres);<sup>xxxx 819</sup>

- allowed commercial fishing in the remaining non-wilderness waters of Glacier Bay proper.<sup>yyy</sup> Fishing was limited, however, to longlining for halibut, trolling for king salmon during the “winter” months, and fishing with pots or ring nets for Tanner crab by fishermen who could prove a history of participation in those fisheries;
- prohibited “new or expanded” fisheries in Glacier Bay N.P.;
- directed the Secretary of the Interior and the State of Alaska to cooperate in the development of a management plan for the regulation of commercial fisheries in Glacier Bay N.P.
- authorized a buyout of Dungeness crab fishermen who had fished in the wilderness waters of the Beardslee Islands or Dundas Bay for at least six years during the period 1987 through 1996. In exchange for agreeing not to engage in commercial fishing for Dungeness crab in Glacier Bay proper and surrendering their permits to the State of Alaska for the purpose of its retirement, each permit holder was to be compensated whichever was greater: \$400,000 or the fair market value of the permit plus an amount equal to forgone income for the years 1999 through 2004, based on the individual’s net earnings from the Dungeness crab fishery from 1991 through 1996. At the option of the fishermen, the NPS would purchase at fair market value from each fisherman one fishing vessel and the crab pots used in the Dungeness crab fishery under the surrendered permit. The legislation authorized up to \$5 million to implement the buyout program.<sup>820</sup>

Among the federal bureaucrats, Randy King, who had been working on the issue for years, called the result “very much unexpected for all of us involved in the issue.”<sup>821</sup> King characterized the legislation as “not perfect,” but added that it was now the NPS’s job to “try to make it work and make it the best we can.”<sup>822</sup>

<sup>www</sup> The elimination of sport fishing in Glacier Bay was not and is not a goal of the NPS.

<sup>xxxx</sup> Approximately 18% of the park’s marine waters were closed to commercial fishing. These waters historically accounted for less than 10 percent of the total commercial harvest (reported biomass) in Glacier Bay N.P.

<sup>yyy</sup> In certain waters of Glacier Bay’s east and west arms, all commercial fishing was terminated except seasonal (October 1 through April 30) trolling for king salmon by those who could prove a history of participation in this fishery.

Bruce Babbitt hailed it as “a fair and reasonable solution.”<sup>823</sup> Deborah Williams, the DOI’s representative in Alaska, thought the deal was “a very fair compromise” that protected both fishermen and the environment.<sup>824</sup>

The reaction by fishermen was far less enthusiastic. Joe Emerson, who had a long history of trolling and longlining in Glacier Bay, said “Some people feel it’s the best we can get. Some people feel it’s a lousy idea and we should go to court.” Emerson thought the principal impact of the commercial fishing closures and restrictions would be on the communities surrounding Glacier Bay. His observation was echoed by Tom Traibush, one of the principal Beardslee Island crabbers who were about to be bought out. Traibush voiced concern for the two processors in Gustavus that were about to lose a major portion of their business.<sup>825</sup> Competitors though they were, Icy Passage Fish and Point Adolphus Seafoods found themselves in the same dire situation, and immediately coordinated their efforts to obtain consideration from Congress.

Senator Stevens defended his legislation on the floor of the U.S. Senate, observing that

There simply has been no solution that Alaskans can fully support. In the omnibus bill we have chosen the lesser of evils. Without Congressional action, the National Park Service would have gone forward with regulations to phase out fishing in the Bay over 15 years and eventually ban it altogether... I reluctantly concluded that this proposal was better than taking no action at all.

According to Stevens, the legislation was a “safety net” that offered better protection to fishermen’s interests than was offered by the draft NPS regulations. The senator admitted that the losses to local communities and processing companies had not been addressed “because we simply did not have time in the closing days of the 105<sup>th</sup> Congress to identify the scope of the problem or the extent of the relief needed.” According to Stevens, the DOI acknowledged that this was a shortcoming in the legislation and had pledged to work with the Alaska delegation to address the issue. Senator Stevens pledged to work in the months ahead with local communities and processors to rectify this situation. Among

the remedies was financial compensation for communities and small businesses. Stevens also emphasized the “critical importance” of Glacier Bay N.P.’s outer waters remaining open to commercial fishing.<sup>826</sup>

Alaska Representative Don Young considered the compromise “a bite at parts of the apple,” and “the best we could do this year” because it kept some people fishing.<sup>827</sup> Alaska Governor Knowles expressed a similar sentiment: the compromise was the “best that was attainable under the circumstances.” Knowles also expressed a desire to work with Senator Stevens to address some of the remaining issues.<sup>828</sup>

Alaska’s junior senator again rejected the compromise: “I don’t look at it as being a done deal... An injustice was done. There was no reason for it. I intend to pursue it with legislation that rectifies the situation.”<sup>829</sup> “What’s done can be undone—or at least most of it,” wrote Senator Murkowski in the *Ketchikan Daily News*. Murkowski vowed once more to continue to introduce Glacier Bay legislation in the next Congress and to keep introducing it until he could get it passed.<sup>830</sup> A representative of the NPCA said that Senator Stevens’s aides Christine Schabacker and Lisa Sutherland told her that Stevens was in total philosophical agreement with Senator Murkowski, and had only negotiated because he was forced to do so by the Republican leadership. They added that Stevens might work with Murkowski and Congressman Young on legislation to “get back to where we were,” though they doubted that the Dungeness crab or wilderness waters provisions would be revisited.<sup>831</sup>

There was a question of how fisheries managers would react to the phase-out and closure of commercial fishing in Glacier Bay. The International Pacific Halibut Commission determined that since Glacier Bay was a “relatively small area” that depended on in-migrating halibut for its productivity, it was unlikely that any adjustment to the Area 2C halibut quota would be made.<sup>832</sup>

The situation was different with Tanner and Dungeness crab. Glacier Bay’s share of the Tanner crab harvested in Southeast Alaska between 1989 and 1998 ranged from a low of 7 percent in 1991 to a high of 18 percent in 1997. Overall, it averaged about 10 percent. ADF&G’s position was that it was not possible to know with certainty how the restrictions

on Tanner crab might affect the fishery, noting that management of fishery harvests was “a dynamic and evolving process” that responded to crab population changes and other factors. Barring unforeseen circumstances, however, Southeast Alaska Tanner crab fishermen could expect the region’s Guideline Harvest Level to be reduced in proportion to declines in the Glacier Bay harvest.<sup>833</sup> The Tanner crab ring net fishery, for all practical purposes, was ended because nearly all the productive ring net fishing grounds in Glacier Bay were located in wilderness waters.<sup>834</sup> (At least two ring net fishermen continued to fish Tanner crab in Glacier Bay after 1999. Only one fished during the 2007 season.<sup>835</sup>)

Glacier Bay’s share of the Dungeness crab harvested in Southeast Alaska between 1989 and 1998 ranged from a low of 4 percent in 1998 to a high of 10 percent in 1993. Overall, it averaged about 6 percent of Southeast Alaska’s production. ADF&G managers could not predict how the Glacier Bay closure to Dungeness crab fishing would affect their management of the species.<sup>836</sup> (As of the end of the year in 2006, no adjustments had been made.)

No change was expected in the management of the king salmon troll fishery. The average number of king salmon harvested annually in Glacier Bay for the years 1989 through 1998 was about 2,000.<sup>837</sup> King salmon are highly migratory, and Glacier Bay’s harvest of king salmon even in its best years was less than two percent of Southeast Alaska’s annual quota.<sup>ZZZZ</sup>

Glacier Bay’s production of king crab was so small that its elimination was expected to result in no change in the management of the fishery in Southeast Alaska. The groundfish (basically Pacific cod) fishery that had developed in Glacier Bay was also very marginal. Its termination region-wide was insignificant. NPS regulations allow the retention, subject to state and federal fisheries regulations, of groundfish caught as by-catch in the halibut fishery.<sup>838</sup>

On November 6, 1998—two weeks after the buyout bill became law—Rob Bosworth, deputy commissioner of ADF&G, sent a memorandum to members of the Glacier Bay work group informing them that the stakeholder process was ended. (His memorandum was partly a formality: fishing interests had already pulled out of the process.<sup>839</sup>) Bosworth

expressed personal appreciation for the years of effort devoted to resolving the issue, and said that the fact that the work group was not directly involved in crafting a solution was no reflection on its accomplishments.<sup>840</sup> Bosworth later said that the most frustrating aspect of the stakeholder process was the refusal by some in the fishing industry to acknowledge that the continuation of the status quo in Glacier Bay was not an option, that at least some restrictions on commercial fishing were inevitable.<sup>841</sup> While it is true that the working group was not directly involved in the legislative process, the use of the group’s June 1998 report by Senator in his negotiations with DOI indicated that their effort had value.

<sup>ZZZZ</sup> The annual quota for king salmon is stated in individual fish.

## Chapter 9: The NPS Implements the Legislation

### Implementation

One effect of the legislation was that it forced the NPS into the unfamiliar and often complicated realm of the economics of commercial fishing. The Glacier Bay legislation stipulated that the Secretary of the Interior was to determine eligibility for Lifetime Access Permits (LAPs) as well as do the potentially complicated calculations to determine income earned by Dungeness crab fishermen who considered themselves entitled to more than \$400,000 in compensation. The Alaska Department of Fish and Game, of course, could have helped, but viewed this as an unwanted problem that the NPS had itself created. So far as ADF&G was concerned, the NPS was on its own.

In short order, the NPS had to establish a mechanism for the buyout of Dungeness crabbers and determine a fair formula to award LAPs in the halibut, troll salmon and Tanner crab fisheries. Because Dungeness crab fishing interests were very involved in shaping the buyout, Senator Stevens's legislation on the Dungeness crab fisherman buyout was specific. The buyout process, though it required the services of accountants familiar with the fishing industry, was fairly straightforward. The legislation, however, was not specific on how LAPs might be awarded, except that the eligibility criterion was limited to "qualifying years which shall be established by the Secretary of the Interior."<sup>842</sup> Under the standard rulemaking process, the secretary would establish a timeframe as the basis for receiving LAPs. Within this timeframe a fisherman would have to document a specified minimum number of years of participation in a grandfathered fishery to be eligible for a LAP.

The NPS had some unfinished business to attend to. The public comment period for the April 1997 proposed rule was still open when the Glacier Bay commercial fishing legislation became law. (The legislation was signed on October 21; the public comment period on the proposed rule stayed open until November 15.) Some elements of the proposed rule were made moot by the legislation. Others—though second-tier issues—remained to be addressed.

In light of this, the NPS on December 11, 1998 "re-opened" the public comment period on a modified version of the original proposed rule. The modified version conformed to the statutory changes made by the October legislation. The NPS sought public comment and ideas on new and pressing business (the criteria that should be used to establish appropriate eligibility requirements for LAPs), and relatively old business (the cooperative management of Glacier Bay N.P.'s fisheries by the state and NPS, appropriate marine research projects, and the development of a Hoonah Tlingit cultural fishery).<sup>AAAAA</sup> At the time of this reopening, the NPS had already received more than 1,300 public comments on the proposed rule and environmental assessment (EA). Comments were originally scheduled to be accepted until January 15, 1999, but the comment period was extended until February 1 because of requests and a delayed mailing of the *Federal Register* package.<sup>843</sup> This was the fourth extension of the public comment deadline for the proposed rule.<sup>844</sup>

Six Dungeness crab fishermen were eligible to be bought out. Of these, only Tom Traibush and Charlie Clements elected to claim compensation greater than \$400,000. Lacking in-house expertise and to ensure impartiality, the NPS contracted with Mikunda, Cottrell & Co., an Anchorage accounting firm experienced with fisheries to review the financial statements necessary for the buyouts.

Thanks to Senator Stevens, the firm would have to employ some non-traditional accounting to do its job. While the legislation that provided for the buyouts was written in a straightforward manner, Stevens's statement on the Senate floor about how expenses were to be calculated for those who might elect to have their lost income replaced complicated the issue.

Depreciation is considered an expense in standard accounting practice. When calculating a Dungeness crab fisherman's income, Senator Stevens, however, stated that "Paper losses such as depreciation used for Internal Revenue purposes only, should not be subtracted in calculating net income."<sup>845</sup>

<sup>AAAAA</sup> The idea of a Hoonah Tlingit cultural fishery never really took hold with the NPS or in Hoonah, and is not actively being pursued.

Such accounting would inflate a fisherman's income substantially. On the advice of Mikunda, Cottrell, Chief Ranger Randy King, who was in charge of administering the Dungeness buyout program, instructed that standard accounting practice be used, that depreciation be considered an expense. Shortly thereafter a terse letter from Stevens reaffirmed his instructions on the issue, and King instructed the accountants to use the senator's definition of net earnings.<sup>846</sup> Tom Traibush was the greatest beneficiary of this non-traditional accounting, and Senator Stevens's directive became informally known as the "Traibush Amendment."

Just as fishermen can be phased out, regulations can be phased in. The first significant opportunity the NPS would have to enforce October's legislation was the 6-day Tanner crab season that began on February 15, 1999. Although no official rules had been published, the NPS had the authority to immediately begin enforcing the new law, which closed some traditional Tanner crab grounds to commercial fishing (see Figure 35). Chief Ranger Randy King, however, chose to use the opening as an opportunity to educate fishermen.<sup>847</sup> He had the support of Superintendent Tomie Lee, who said "I'm very sold on the idea, with major changes, that we do go through a period of education wherever it is possible ... I don't believe in dropping things on people."<sup>848</sup>

King outlined the Tanner crab education (and monitoring) effort. Fundamental to the effort was the establishment of an enforcement presence by the NPS. Rangers would contact and board as many vessels as possible to check for fisheries compliance and inform fishermen about the changes made by the October legislation. Closed areas would be targeted, and vessels fishing in those areas would be asked to leave voluntarily. Non-compliance would be documented, but the NPS had no intention of issuing violation notices for fishing in closed waters. Rangers would also document who was fishing in Glacier Bay, where they were fishing, and on which vessel.<sup>849</sup>

The standard procedure for boarding a commercial fishing vessel by NPS rangers was as follows: "The Park vessel stands off until radio contact is made with the captain of the fishing vessel and the request to approach and board is acknowledged. If the fishing vessel

is involved in hauling traps/fishing gear, the Park vessel will stand off until that activity is completed before attempting to make contact via radio (see Figure 36). This is to minimize the disruption to the fishing operations of the vessel."<sup>850</sup> This procedure was followed during the 1999 Tanner crab season. NPS regulations require that rangers on patrol be armed.

About 14 to 25 vessels typically fished Tanner crab in Glacier Bay during this period. During the 1999 season NPS rangers saw only 14, of which 13 were boarded (see Figure 37). "About three" vessels were boarded in closed waters, all of which moved their gear (crab pots) out within a day.<sup>851</sup> Although one of the fishermen who had been boarded (not in a closed area) was "angry or upset," it seemed to have been a pretty uneventful six days of business as usual.<sup>852</sup>

Two days after the season closed an article titled "Glacier Bay Crabbers Unexpectedly Ousted" appeared in the *Juneau Empire*. A similar article appeared in the *Petersburg Pilot*.<sup>853</sup> In the articles, Jon Place, who fished Tanner crab on the vessel *Emily Nicole*, recounted being boarded by NPS rangers in Charpentier Inlet, where he had just set his gear. According to Place, the rangers informed him that he was fishing in closed waters, and that when he pulled his gear, it would have to be moved. Place showed them the ADF&G regulatory information for the Tanner crab fishery, which did not show the area as being closed. Place did move his gear, but claimed that doing so cost him and his crew about \$30,000 in gross revenue. Ken Eichner, owner of the vessel, said "We definitely felt we were given a warning to remove our gear or we'd be in violation of federal law." He added that, "They have a person with a gun, with some authority. The people in the (ranger) boat are taking evidence with a camera. They're circling the boat taking movies of it. They interviewed the crew." He didn't believe they had any option other than to move the gear.<sup>854</sup>

Whether they had read about the crabbers in the newspaper or had been informed directly, Alaska's Congressional delegation did not portray the boardings as business as usual. Senator Stevens said they were "almost unheard-of and show[ed] an overzealousness" on the part of the NPS.<sup>855</sup> His rhetoric was mild in comparison to that of Senator Murkowski and Representative Young. Murkowski accused the NPS of "outright piracy," and he claimed "the



# Commercial Fishing

Public Law 105-277, as amended.

Glacier Bay National Park and Preserve  
National Park Service  
U. S. Department of the Interior

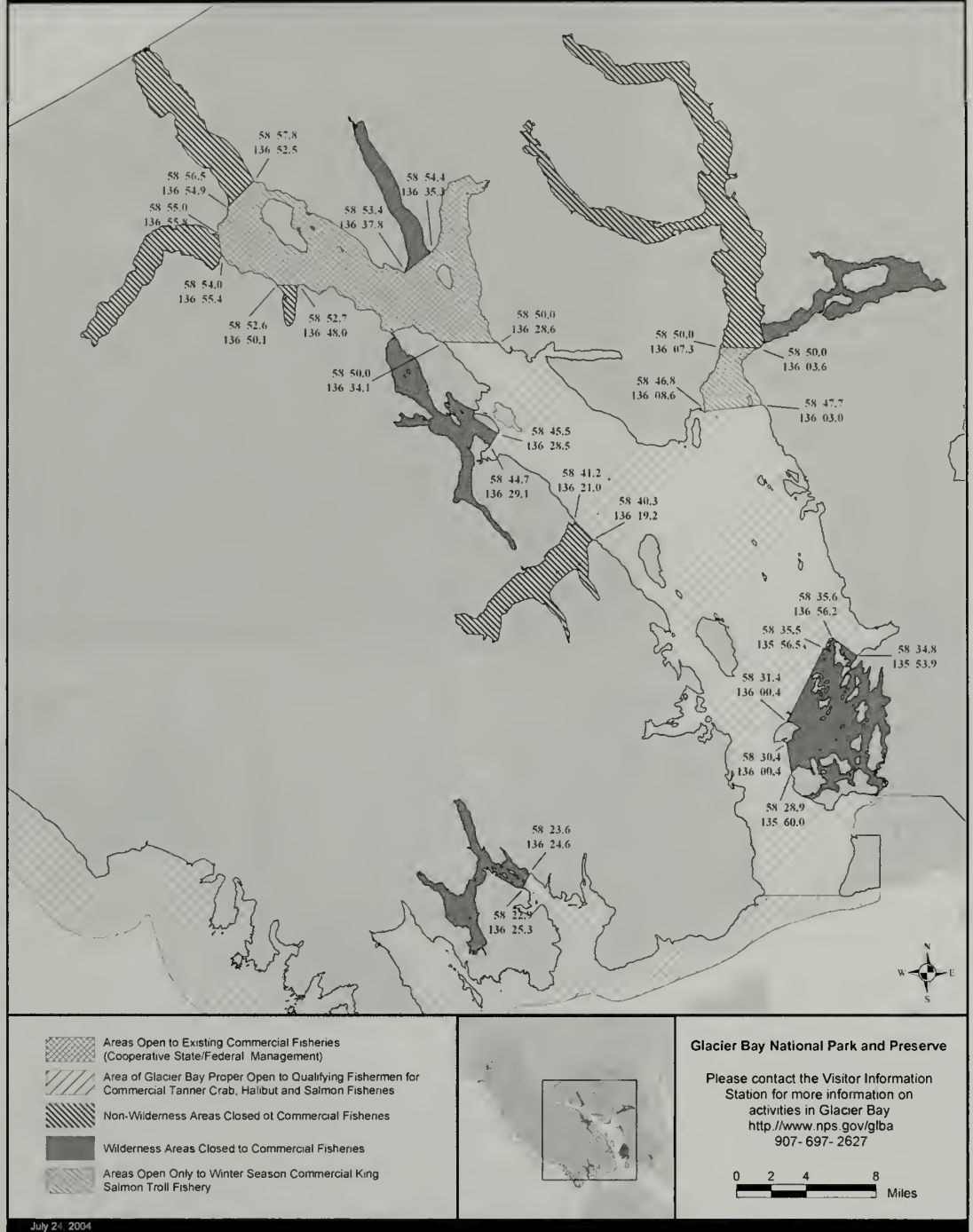


Figure 35: Public Law 105-277 closed some areas of Glacier Bay to commercial fishing, restricted fishing in others, and left non-Glacier Bay proper waters open to existing fisheries.

boats likely lost thousands of dollars because of the lost fishing opportunities during the brief winter tanner crab season.” Young charged the NPS with being “out of control,” and “nothing more than a puppet for the national environmental organizations.”<sup>856</sup>

The claims and accusations of Alaska’s Congressional delegation had no merit. They were soon rebutted by Gerry Merrigan, director of the Petersburg Vessel Owners Association.<sup>BBBBB</sup> Merrigan said that the rangers were

“polite and professional,” and added that “no fisherman likes the boardings, but the Park Service has done them for years to check licenses and gear.”<sup>857</sup> As Senator Murkowski pointed out, however, it would have been very easy for the NPS to have sent all of Southeast Alaska’s Tanner crab fishermen a letter prior to the season explaining the new law and showing the closed areas on a map.<sup>858</sup>

In a March 11, 1999 news release, Glacier Bay Superintendent Tomie Lee stated that the

<sup>BBBBB</sup> Some 46 percent of southeast Alaska’s Tanner crab permits were based in Petersburg.



Figure 36: Tanner crab fishermen hauling pots in Glacier Bay, with NPS ranger patrol waiting to board. (NPS collection, Bartlett Cove, Alaska)



Figure 37: NPS ranger and fisherman discuss Tanner crab fishery. (NPS collection, Bartlett Cove, Alaska)

NPS did not intend to implement the closures and restrictions required under the previous fall's legislation until adequate notice had been provided to fishermen. She expected the closures and restrictions to be implemented over the course of the summer.<sup>859</sup>

Apparently Alaska's Congressional delegation was reluctant to give up on its grossly inaccurate rhetoric regarding the Tanner crab boardings, because in March 1999 it—including Senator Stevens—attempted to undermine some of the compromise negotiated

between Senator Stevens and the DOI less than five months earlier. It also tried to penalize the NPS for the actions of its purportedly out-of-control, overzealous, and piratical rangers at Glacier Bay. On March 2, Senators Murkowski and Stevens introduced the “Glacier Bay Fisheries Act” (S. 501). Under this legislation—which Murkowski had been threatening to introduce since the previous October—all fishing in Glacier Bay N.P., save Dungeness crab in the Beardslees and Dundas Bay, would have been permitted. Additionally, in retribution for the trumped-up harassment of Tanner crab fishermen in February, the legislation authorized the Secretary of the Interior to pay up to \$2,000,000 per year to fishermen in Glacier Bay N.P. who suffered losses because of interference by federal agents.<sup>860</sup> Representative Young introduced an identical companion bill (H.R. 947) in the House on the same day.<sup>861</sup> In preparing a response to this legislation, the NPS considered that it could conceivably find itself responding to lawsuits by fishermen seeking compensation—including punitive damages—for time spent checking compliance with federal regulations that pertained to commercial fishing in Glacier Bay.<sup>862</sup> Don Barry, Assistant Secretary of the Interior for Fish and Wildlife and Parks, testified that the “proposed law would put the National Park Service in the unreasonable position of potentially paying for disturbing a fishing period while investigating other, potentially serious crimes, or while responding to other park emergencies,” such as the grounding in Glacier Bay of the cruise ship *Yorktown Clipper* in 1993.<sup>863</sup>

The legislation had little support in Congress and President Clinton said he would veto it if it made it to his desk. Nevertheless, Senator Murkowski held a committee hearing on the Glacier Bay Fisheries Act on April 15. Senator Murkowski and Senator Jeff Bingaman (D-NM) were the only senators present at the hearing, which was described by an NPS official who attended as “more of the same,” with Murkowski taking the opportunity to savage the NPS by characterizing the boardings of Tanner crab vessels in Glacier Bay in February as “Gestapo-type tactics.”<sup>864</sup> While it may have given him some personal satisfaction, Senator Murkowski’s legislative effort was all

for naught. As written, the Alaska’s delegation’s Glacier Bay bill had no future.

Dismissive of the Park Service’s mandate and in apparent support of Alaska’s senators’ effort to undo most of the previous fall’s legislation, the editors of Alaska’s largest newspaper, the *Anchorage Daily News*, took up the cause of the continuance of commercial fishing in Glacier Bay. In an editorial titled “Glacier Bay: Fishing boats fit in just fine,” the *Daily News* argued that commercial fishing should be permitted to continue in the bay, that the activity had “long been part of the rhythm of life in the park,” and that “park values should include people who can make part of their livelihood there, and leave hardly a ripple.” The paper pointed to the fact that the NPS had no evidence that commercial fishing had harmed the national park or that natural processes had been impaired for present or future generations. Commercial fishing, it said, was not akin to “strip mining or clear-cutting to the edge of salmon streams.” In contrast to the heated rhetoric of Senator Murkowski and Representative Young, however, the *Daily News* stated with civility that the NPS was not the enemy, but asserted that it was, in the case of Glacier Bay, “just wrong.”<sup>865</sup>

Meanwhile, Senator Stevens’s promise on the Senate floor to address the losses of processors and communities was taken very seriously by those directly and indirectly affected by the closures and phase-outs. The group included crewmembers, processing workers, and support businesses throughout Southeast Alaska. It also included the State of Alaska, which collected fishery business taxes that, after being shared with the city in which it was collected, amounted to 1.5 percent of the ex-vessel value of fish caught.<sup>CCCCC</sup> In mid-February 1999, Governor Knowles sent letters to Alaska’s Congressional delegation expressing his desire to work with them in “formulating a plan outlining economic relief” for small businesses and communities affected by the closures and restrictions on commercial fishing in Glacier Bay.<sup>866</sup>

While the DOI had pledged to work with Alaska’s delegation to address the issue, it lacked the information to make a credible

<sup>CCCCC</sup> The State of Alaska collected a fishery business tax equal to 3% of the amount paid by processors to fishermen for fish. Half of this amount is then remitted to the city in which the tax is collected, ostensibly to be used to construct and maintain fisheries-related infrastructure.

calculation of the losses. The job fell to ADF&G, which had considerable information, some of which it could not share due to confidentiality regulations. Acting in the interest of those affected by the closures and phase-outs, ADF&G tasked staff economist Jeff Hartman to determine what those losses might total in Southeast Alaska. In a draft report dated March 16, 1999, Hartman determined that compensation for the losses would range from \$16 million to \$23 million.<sup>867</sup> His work, though never finalized, would serve as the basis for legislation two months later. The NPS later expressed confidence in Hartman's analysis.<sup>868</sup>

On March 4, Senator Stevens introduced S. 544 ("An original bill making emergency supplemental appropriations and rescissions for recovery from natural disasters, and foreign assistance, for the fiscal year ending September 30, 1999, and for other purposes"). By March 23 the bill had passed the Senate and included several Glacier Bay provisions added by Stevens. Perhaps the most important provision expanded the eligibility period for the Dungeness crab buyout program by two years. Two fishermen, Matt Metcalf and Rodney Selvig, both with very substantial histories and dependence on the fishery, were the primary beneficiaries, which had been included at the request of Randy King. King was in charge of the Dungeness crab buyout program and had a solid understanding of the fishery. Another Glacier Bay provision prohibited the NPS from implementing new commercial fishing regulations for a period of 60 days after the final rule had been published. This would preclude awkward "non-enforcement" situations such as with the February 1999 Tanner crab fishery. A final provision required the NPS to provide partial compensation to eligible Dungeness crab fishermen who had not received full compensation by June 15, 1999.<sup>869</sup> As of June 15, 1999 the wilderness waters of Glacier Bay were officially closed to commercial fishing.

In early 1999 it became apparent that legal requirements and accounting procedures would delay the NPS's ability to provide full compensation to the six Dungeness crab fishermen who qualified to be bought out. On April 12, 1999, the DOI authorized initial (interim) payments of \$400,000 to each of those fishermen.<sup>870</sup>

Senator Stevens was also seeking a compensation package for those who were nega-

tively impacted by the restrictions on commercial fishing in Glacier Bay. An amendment was prepared that would have appropriated up to \$18 million to do so, but it was withdrawn before being offered on the Senate floor because of objections by Senator Murkowski, who posed a fundamental question: "Do we want to try and keep Glacier Bay open under state management or do we want to pay the fishermen for not fishing?"<sup>871</sup> There was no question that Murkowski favored the former, but he did an about face after hearing from hard-pressed fishing interests and Alaska Attorney General Bruce Botelho. Botelho stated that the compensation package would not interfere with the state's efforts to preserve commercial fishing in Glacier Bay.<sup>872</sup>

This did not mean that Senator Murkowski would rest quietly on the Glacier Bay issue. On March 23, he introduced an amendment (rider) to S. 544 that would have prohibited the NPS from expending funds to implement closures or restrictions on commercial fishing (and subsistence fishing and gathering) in Glacier Bay N.P., save the Dungeness crab fishery closed by the previous October's legislation, until the long-simmering dispute over whether the Federal Government or the State of Alaska held title to the Park's submerged lands was settled in court. (Two days later, on March 25, 1999, S. 544 was incorporated into H.R. 1141, the "1999 Emergency Supplemental Appropriations Act," the Senate measure's companion bill in the House.)<sup>873</sup> A *Seattle Times* editorial accused Senator Murkowski of "playing fast and loose," and characterized the senator's desired effect as being "a perpetual state of legal limbo and an environmental purgatory for a rare treasure."<sup>874</sup> Despite its controversial nature, Murkowski's legislation was endorsed by Senator Stevens and also received a qualified endorsement by the Knowles administration. The "bottom line" for Governor Knowles was that commercial fishermen's incomes be protected either through a moratorium or compensation. If Senator Murkowski's moratorium amendment became the subject of a veto threat or was otherwise imperiled, he urged it be withdrawn in favor of Senator Stevens' "comprehensive compensation package."<sup>875</sup> Both Governor Knowles and Senator Stevens maintained that Glacier Bay's waters belonged to Alaska.<sup>876</sup> Senator Murkowski's problem, however, was with his colleagues—both

Republican and Democrat—in Congress. Max Baucus (D-Mont.) pointed out that no one could be certain how long the court case might take, and that the real intent of the amendment was to rescind the compromise agreed to in the Senate in October.<sup>877</sup> Irritated that he was revisiting an issue that had been settled, Senator Lincoln Chafee (R-R.I.) quoted Yogi Berra. Murkowski's ploy, he said, was "déjà vu all over again."<sup>878</sup> Nevertheless, by a 59-40 vote Senator Murkowski's rider was attached to the spending bill. Some construed this rider as the second half of a possible win-win situation for Glacier Bay fishermen: other than the Dungeness crab fishery, Murkowski's rider would keep Glacier Bay open to commercial fishing, while Stevens's efforts might provide an insurance policy that would authorize compensation should commercial fishing in Glacier Bay ever be terminated. Others thought the result might be a moratorium on commercial fishing closures without the elimination of compensation—fishermen, in a sense, would be paid to fish. Still others were concerned that at the end of the day the result might be no fishing and no compensation.<sup>879</sup>

Environmental groups paid close attention to the funding bill and to the efforts of Alaska's senators regarding Glacier Bay. Murkowski's was not the only rider on the bill, but it may have caused the most alarm. In late April a group of nineteen "extremely concerned" environmental groups ranging from Friends of the Earth to SEACC beseeched President Clinton to insist that Congress provide him with a bill free of "anti-environment" riders. The Glacier Bay rider topped their list.<sup>880</sup>

Though he would likely have done it without the environmental groups' request, Clinton, as he had done before, promptly threatened to veto the entire spending bill if Murkowski's rider was not removed. In all, it was political maneuvering at its best. As Randy King had written a little earlier, "We're all along for the ride now."<sup>881</sup>

On May 11 the legislation went into conference committee. As lead Senate conferee, Ted Stevens was in his element. At the request of Senator Murkowski, Stevens took the virtually unprecedented act of granting Murkowski (who was not a member of the committee) an opportunity to defend his rider in the conference committee. Among Murkowski's harshest critics was Representative Ralph Regula (R-Ohio), who chaired the House Appropriation Subcommittee on Interior, Environment

and Related Agencies. Regula said that he was troubled that "after a great deal of trouble by the Alaska delegation last year, we finally worked something out on this. This repeals a portion of what was agreed to last year."

Senator Stevens, sporting the Incredible Hulk tie that he wore on special occasions to signal his willingness to do battle, angrily defended Murkowski's rider. His effort was futile. On May 13, the Murkowski amendment was killed by unanimous vote of House conferees, who feared the veto of a crucial spending bill.<sup>882</sup> Despite the broad opposition to his efforts, a riled Senator Murkowski vowed to continue the legislative fight with separate legislation, and to "keep coming back until we win."<sup>883</sup>

When the legislation emerged from conference the following day, \$23 million had been "emergency" earmarked to "compensate Dungeness crab fisherman, fish processors, fishing crew members, communities and others negatively affected by restrictions on fishing in Glacier Bay National Park."<sup>884</sup> Another \$3 million had been added to the \$5 million Dungeness crab fishery buyout fund.

The conference report was debated in the Senate on May 20. John McCain (R-AZ) took the conferees to task for adding "emergency" provisions to the bill without going through the proper channels and larding it with "non-emergency, garden-variety, pork-barrel spending." High on his list of complaints was the Glacier Bay "special-interest project" earmark.<sup>885</sup> Though Senator Stevens's name may have been on the earmark, he had not acted alone. The \$26 million appropriation—the price tag for closing Glacier Bay to commercial fishing—had been negotiated between Stevens's office and the Clinton administration, which was represented by Assistant Secretary of the Interior Don Barry.<sup>886</sup> The cost was made more palatable by the fact that the Federal Government was running a substantial budget surplus.

The legislation was passed by Congress (Senator Murkowski voted against it, in part to protest the House's rejection of his Glacier Bay amendment), and when President Clinton signed it on May 21, 1999 he noted that Congress had "...removed or modified certain objectionable riders that, for example, would have blocked our efforts to protect the sensitive waters in Alaska's Glacier Bay."<sup>887</sup>

Robert Barbee, NPS Alaska Region director, congratulated Interior Assistant Secretaries

Don Barry and John Berry even before the legislation had passed Congress:

Just a quick note to express our profound gratitude for your efforts on behalf of Glacier Bay in resolving the commercial fishing issue. We simply wanted to let you both know how much we appreciate the role you played and how well you played it. In no small way the future of Glacier Bay as a world class National Park and 'Marine Reserve' is due to your effectiveness.<sup>888</sup>

Mr. Barbee also sent a letter thanking Randy King, who probably understood the Glacier Bay commercial fishing issue better than anyone in the NPS, and who for nearly nine years was the agency's somewhat reluctant soldier on the front lines of this highly controversial and emotional issue.<sup>889</sup>

In addition to appropriating compensation and buyout funds, the 1999 legislation required that the \$23 million be distributed under a program developed with the concurrence of the State of Alaska. It retained the expanded eligibility for the Dungeness crab fishermen buyout and the provision for partial compensation to those Dungeness crab fishermen who had not been fully compensated by June 15, 1999. The legislation also required the NPS to publish a final rule on commercial fishing before September 30, 1999, and prevented the agency from restricting commercial fishing in the non-wilderness areas closed to that activity under the October 1998 legislation until the beginning of the year 2000 season for the respective fisheries.

As a floor manager for the legislation, Senator Stevens provided some guidance to the NPS on how Congress (at least the floor managers) expected the compensation plan to be implemented. "For this program to be done right," said Stevens, "it must be done jointly with the State of Alaska." This was necessary because the state had data on fishermen's income that would be needed to determine appropriate compensation. Stevens thought the NPS could implement the program jointly with the state under a cooperative agreement or simply contract the state to do so. The costs of administering the program would be deducted from the \$23 million, but "Under no circumstances should

administrative expenses be more than 5% of available funds," said the senator.<sup>890</sup>

Still unable to accept that commercial fishing was being phased out of Glacier Bay, an obstinate Senator Murkowski made good on his vow to continue the legislative fight, despite extremely slim prospects for success. On June 17 Murkowski introduced a new amendment to undermine Senator Stevens's compromise of the previous year and make a joke of the compensation package signed into law less than a month previously. His amendment involved an 18-month moratorium during which the NPS would not be allowed to spend any money to implement commercial fishing regulations in Glacier Bay N.P., save those on Dungeness crab. During the 18-month period a joint study would be conducted by NPS and ADF&G to determine the environmental impacts of commercial fishing (and subsistence gathering) in Glacier Bay. NPS funds would be used to pay for the study.<sup>891</sup>

Murkowski's amendment—unpopular, to be sure—fell easy victim to the give and take of the legislative process that began with H.R. 1141, the emergency legislation that carried Senator Stevens's Glacier Bay compensation language. In May 1999, the Kosovo and Southwest Asia Emergency Supplemental Appropriations Act, 1999 was being debated in Congress.<sup>892</sup> Senators Robert Byrd (D-WV) and Peter Domenici (R-NM) had added amendments to the legislation that provided loan guarantees to the steel and oil and gas industries. House conferees made it clear that these non-germane amendments were unacceptable, and would doom the important bill. In the interest of moving the legislation along, Senator Stevens gave his word to Byrd and Domenici that if they withdrew their amendments, he would promptly roll them into a single freestanding bill that was acceptable to House leaders. Consistent with the Kosovo legislation, House leaders had made it clear that they would consider the loan guarantee bill only if it was free of non-germane amendments. The amendments were withdrawn and the emergency Kosovo funding was soon secured, though on a different bill.<sup>893</sup> Undeterred by Stevens's promise to his colleagues, Murkowski attempted to add his Glacier Bay amendment to the loan guarantee legislation. Senator Stevens was determined to remove it, and the junior senator from Alaska reluctantly acknowledged his amendment's

fate: "I am disappointed to learn that my senior colleague intends to table the amendment."<sup>894</sup> Senator Stevens was successful at doing so, but made it clear that it was not for any reason other than to keep his promise to Byrd and Domenici.<sup>895</sup> Free of unacceptable amendments, the Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 became law in August 1999.<sup>896</sup> Murkowski's amendment was never resurrected, but this failure to get unpopular, long-shot legislation enacted did not deter him from similar efforts in the future.

After nearly two decades of controversy, the official prohibition of commercial fishing in Glacier Bay's designated wilderness waters took effect on June 15, 1999.<sup>897</sup> As a statement of cooperation with the NPS, ADF&G published a special news release listing NPS regulations for fishing Tanner crab in Glacier Bay; it did not do so, however, until early 2001.<sup>898</sup>

Because the buyout program had not been completed before June 15, 1999, the date the Dungeness crab season was scheduled to begin, the NPS permitted Dungeness crab fishing in Glacier Bay's non-wilderness waters to continue until September 30, 1999. (This closure date was somewhat misleading, because the Dungeness crab fishery was managed by ADF&G, which set the summer season's closure date as August 15.) The closure of wilderness waters didn't leave much room for fishermen, but Tom Traibush was ready for the season in Glacier Bay, such as it was. To the author's knowledge, no one had ever set commercial crab gear in Bartlett Cove's inner lagoon, which was small and shallow and could only be entered at high tide. Located on the south side of the lagoon are the NPS's offices, where Superintendent Tomie Lee occupied the office with the best view. At the season's opening Traibush set about a dozen pots in the lagoon. It was an in-your-face gesture to the superintendent, which was made all the more so because Traibush used large, bright red buoys instead of his usual small, dull-colored ones. The NPS at that time was still mooring some of its boats at the dock in the inner lagoon. The buoys and buoy lines were something of an inconvenience to navigation, and Randy King asked Traibush to remove them. Traibush did so, and later reported that he actually caught a surprising number of crab.

The last commercial crab pot was hauled from Glacier Bay on August 15, 1999. Under the Glacier Bay legislation of October 1998 and May 1999, twenty-one Dungeness crab fishermen applied to be bought out. Of the nine who were successful, five were based in Gustavus. Together the nine had been licensed to fish a total of 2,100 pots.

The buy-out of one of the Gustavus fishermen was the result of an unintended loophole in the hastily-written legislation. Naomi Sundberg had fished with her husband, Tom Traibush, in Glacier Bay's wilderness waters for enough years to meet the requirement specified in the legislation. In 1997 and 1998, she held a Dungeness crab permit of her own that she used to fish the vessel *Wavelength*. Sundberg applied to be bought out, but her application was rejected by the NPS based on the fact that she had fished under Traibush's permit, not her own.

The NPS's interpretation of the legislation was that an applicant was required to have fished under his or her own permit. The actual wording of the legislation, however, stated simply that an applicant was required to have fished for the qualifying years "pursuant to a valid commercial fishing permit." Sundberg argued in an administrative appeal that fishing under Traibush's permit met the requirement of the law, but the NPS affirmed its original decision. She then took the issue to federal court. The court agreed with Sundberg, ruling that the NPS had "erroneously denied" her compensation, and ordered the NPS to promptly complete the processing of her application.<sup>899</sup>

Based on the Court's decision in this matter, at least one fisherman who had applied for a lifetime access permit (LAP) using documented time as a crewmember was awarded an LAP.

The closure of Dungeness crab fishing in Glacier Bay had an almost immediate effect on Gustavus's two small seafood processing businesses. Icy Passage fish, which had depended almost completely on Dungeness crab, shuttered its operation in 1999. Point Adolphus Seafoods, which was more diversified, continued to operate. Without Dungeness crab, however, that operation was only marginally profitable, and the company bought its last fish in the spring of 2002.

### **Glacier Bay's "Submerged Lands" Issue Resolved**

With the passage of H.R. 1141, the controversy over commercial fishing in Glacier

Bay N.P. was essentially settled, save one very fundamental issue: the State of Alaska still claimed title to Glacier Bay's waters and thus jurisdiction over its fisheries. Though the state's claim, to some, appeared to be more bluster than substance, certainty was impossible without a decision by the Supreme Court. The basis of the state's claim was the Submerged Lands Act of 1953, in which Congress generally ceded certain "submerged lands" to the states.<sup>900</sup> By definition, submerged lands in Glacier Bay N.P. are those lying beneath marine waters extending from the line of mean high tide seaward to a line three geographical miles distant from the coast line.<sup>901</sup> In the State's view, whoever had jurisdiction over the submerged lands also had jurisdiction over the supervening water column and marine resources contained therein.

An exception to the Submerged Lands Act was made for submerged lands that were "expressly retained by or ceded to the United States when the state entered the Union."<sup>902</sup> Since Glacier Bay N.M. had been established prior to Alaska's statehood, the Federal Government retained jurisdiction. The State of Alaska claimed otherwise. Congress offered no direction. Echoing provisions contained in earlier (though failed) legislation, the October 1998 compromise Glacier Bay legislation passed by Congress tactfully avoided the issue of jurisdiction. It stated that "Nothing in this section is intended to enlarge or diminish Federal or State title, jurisdiction, or authority with respect to the waters of the State of Alaska, the waters within the boundaries of Glacier Bay National Park, or the tidal or submerged lands under any provision of State or Federal law."

Submerged lands in Glacier Bay became an issue shortly after Congress designated certain marine waters in the Bay as wilderness under ANILCA. The state was concerned over the ramifications of the designation on established uses of these waters, particularly commercial fishing. It was the opinion of assistant attorney general for Alaska Robert Price in 1982 that "the submerged lands [within Glacier Bay NP] together with the natural resources within such lands and waters covering those lands are the property of the State of Alaska and subject to its management jurisdiction." If Congress was unwilling to delete the wilderness designation of these waters, Price suggested the state could

take the issue to the Supreme Court.<sup>903</sup> The official state opinion was less certain: "there is a substantial legal question concerning the correctness of the presumption" that submerged lands and the supervening water column are within the Glacier Bay N.P.<sup>904</sup>

The NPS clearly did not agree with Price's opinion that the NPS had no jurisdiction over the waters of Glacier Bay. The same year Price made his claim Gary Vequist, resource manager at Glacier Bay, unequivocally wrote that "All the marine waters of Glacier Bay are under the proprietary jurisdiction of the federal government," that the waters of Glacier Bay had been "expressly retained" by the Federal Government when Alaska became a state, and that the "land and water areas included within the Glacier Bay National Park have remained under the supervision, management, and control of the NPS."<sup>905</sup> Vequist was likely quoting a DOI solicitor's opinion.

The issue seemed to be at an uneasy rest when Steve Cowper, Alaska's governor from 1986 to 1990, considered but did not initiate legal action.<sup>906</sup> In 1990, Walter Hickel was elected Alaska's governor, a position that he had held for about 28 months during the late 1960s before becoming President Richard Nixon's Secretary of the Interior. State sovereignty was an issue so close to Governor Hickel's heart that he judged his Department of Law by the simple measure of how many suits it had filed against the federal government. With regard to Glacier Bay, Hickel faced a challenge that none of his predecessors had faced: the NPS had initiated a formal process to phase out commercial fishing. Nevertheless, Hickel did not directly challenge the NPS's jurisdiction over the waters of Glacier Bay. Carl Rosier, ADF&G's commissioner during that time, explained why: "We have also considered judicial relief. However, as you know, the courts are expensive and slow, and the outcome of a legal challenge would be uncertain. If we were to pursue litigation, Alaska's residents would suffer significant losses as they are denied their livelihoods and traditional subsistence activities."<sup>907</sup> (Rob Bosworth, later deputy commissioner of ADF&G, said in 1997 that litigation could take a minimum of 15 years.<sup>908</sup>) This was a candid acknowledgement of the situation the state faced, one that Rosier hoped could be resolved by legislation. Privately, many within the state government thought the chances of



succeeding were very slim, and some on the governor's staff went so far as to characterize a potential lawsuit as a "loser."<sup>909</sup> Nevertheless, while the State of Alaska, its Congressional delegation, and industry boosters largely maintained an air of certainty over the issue, the fact that a legal challenge was not mounted by the Hickel administration, which had both the inclination and the provocation, spoke volumes.

When Tony Knowles succeeded Walter Hickel as Alaska's governor in 1994, the NPS's Glacier Bay commercial fishing rule-making process was stalled pending the possibility of legislation. Though the state publicly asserted "unequivocal claim" to title of submerged lands in Glacier Bay, it was the desire of the Knowles administration to avoid litigation.<sup>910</sup> The governor's hand was forced into his "option of last resort," however, when it became apparent that some sort of restrictions on commercial fishing were in Glacier Bay N.P.'s future.<sup>911</sup> The legal effort was not proactive, but a last-ditch, politically-motivated response to pressure by fishermen and others to "do something."<sup>912</sup>

With the NPS's renewed attempt to phase out commercial fishing in Glacier Bay under Jim Brady, pressure had increased on the state to challenge the federal government's jurisdiction over Glacier Bay's waters. Pressure increased again with the October 1998 Glacier Bay legislation. Senator Murkowski was upset with the restrictions on commercial fishing, and with Representative Young joined a number of commercial fishermen to urge the state to assert jurisdiction over the waters of Glacier Bay.<sup>913</sup> On March 4, 1999, Governor Knowles announced the state's formal notice of intent to sue the NPS. Knowles said the state had no option but to sue, and that the decision to do so was intended to arrive at a final and stable resolution of the questions of ownership and management jurisdiction in Glacier Bay. The legal process required that once the notice was filed, the state had to wait 180 days before actually filing the lawsuit.<sup>914</sup> Senator Murkowski commended Knowles, stating that "We will not trade compensation for access."<sup>915</sup>

Despite the skepticism of some administrative officials, the state did receive some encouraging legal advice, including counsel

from John Roberts, who would later become Chief Justice of the U.S. Supreme Court. And as they developed their arguments, attorneys in Alaska's Department of Law came to believe in the case. They knew, however, that they faced an uphill battle.<sup>916</sup>

On November 26, 1999, the State of Alaska filed suit in the U.S. Supreme Court asserting legal title to the submerged lands of all of Southeast Alaska on four counts. Three counts primarily involved the Tongass National Forest. The fourth was specific to Glacier Bay.<sup>917</sup> "It's time to resolve, once and for all, the issue of where federal jurisdiction ends and state jurisdiction begins in Southeast Alaska," said Governor Knowles.<sup>918</sup> The governor's comment seems to reflect a degree of ambivalence regarding in whose favor the court might rule.

Despite numerous statements to the contrary, the Knowles administration understood that the state was unlikely to prevail on the Glacier Bay count of the lawsuit. According to former Alaska Attorney General Bruce Botelho, since Glacier Bay had been carved out of the Tongass National Forest, to prevail on the Glacier Bay count, the state also faced the difficult task of establishing its ownership of the Tongass' submerged lands.<sup>919</sup> To mitigate its potential losses and save face, the state proposed a settlement with the federal government. A meeting was held between negotiators for the State of Alaska and the U.S. Department of Justice (DOJ) on November 15 and 16, 2001. At this meeting, state negotiators proposed a settlement in which the state would confirm the federal government's title to Glacier Bay's submerged lands. In exchange, they suggested that a reversal of the phase out of commercial fishing in Glacier Bay's non-wilderness waters would meet their needs.<sup>DDDDD</sup> With the support of the Park Service, DOJ rejected the state's proposal as unacceptable, noting that it would be legislatively controversial and perceived as a "political" settlement rather than a settlement of merit reflecting the broad public interest.<sup>920</sup>

In the early summer of 2002, Secretary of the Interior Gale Norton asked the NPS to reconsider the state's settlement offer. Norton's request may have originated with Drue Pearce, a former state legislator who had become

<sup>DDDDD</sup> As what the NPS termed a "secondary interest," the State also wanted Glacier Bay opened to subsistence uses, particularly by the people of Hoonah.

DOI's representative in Alaska, and who was ideologically opposed to the phase out of commercial fishing in Glacier Bay. After brief consideration in which Glacier Bay superintendent Tomie Lee suggested that the state might settle for a liberalization of the LAP program, the NPS once again advised against accepting the state's offer.<sup>921</sup>

Three years later, in June 2005, the Court ruled that the Federal Government had jurisdiction over Glacier Bay's submerged lands. In the Court's opinion, the "exclusion of the submerged lands would compromise the goal of safeguarding the flora and fauna that thrive in Glacier Bay's complex and interdependent ecosystem."<sup>922</sup>

### **Commercial Fisheries Compensation Program**

The late spring in 1999 found the NPS gearing up to administer what became known as the "Glacier Bay Commercial Fishing Compensation Program." It was not a job the NPS wanted. Constructing and administering a compensation plan was bound to be a complex undertaking, and the Service had little in-house expertise. In the realm of commercial fishing, ADF&G, however, had expertise as well as the fisherman data needed to calculate compensation. Glacier Bay N.P. Superintendent Tomie Lee literally begged Senator Stevens's office to have the state (or about anyone else) develop and administer the compensation program.<sup>923</sup> Lee perhaps did not know that John Katz, the state's representative in Washington, DC, had rejected a proposal to include wording in the May 1999 Glacier Bay legislation that would have required the compensation program to be developed and administered by the state.<sup>924</sup> It was the state's fundamental opinion that the NPS had created the problem, and the NPS should deal with it.<sup>925</sup> The state would provide fisheries data to help construct a plan, but offer its concurrence only when a satisfactory plan was developed.

The floor managers of the Glacier Bay legislation expected the DOI to expedite development of the compensation program so that "compensation can be distributed no later than the end of the fishing season."<sup>926</sup> The Tanner crab season had already ended, but the end of the fishing season for halibut in 1999 was November 15. For salmon it was December 31. The expectation of the managers was unrealistic. The development of a fair and

comprehensive compensation plan would be time-consuming under the best of circumstances. It would require a comprehensive economic assessment, provision for public input (mostly meetings), time to prepare a draft plan that would then be subject to public review. Once the final plan was developed, claimants would need an adequate application period. This would be followed by a review of claims and a payment period. Complicating everything was the fact that the compensation plan was supposed to be developed and implemented during the fishing season, when the industry was busiest.

A major downside for the NPS in constructing and administering the compensation program was the controversy and emotion engendered in the entire issue. The NPS recognized early on that public involvement would be essential.<sup>927</sup> Even if one accepted the closures and restrictions on commercial fishing, however, \$23 million is a lot of money to distribute in Southeast Alaska, and there was bound to be a lot of competition among fishermen and others to receive their "fair share." No matter how fairly the money was distributed, it was assumed that not everyone would be satisfied.

For the NPS staff at Bartlett Cove, constructing and administering the compensation plan would be a lot of work and hard emotionally as well. Many of the staff lived in the community, and they were friends and neighbors of the fishermen and others who had been affected by the closures and restrictions of commercial fishing in Glacier Bay. Because their work on the project might make it hard for them to live in the community, Tomie Lee chose to limit the number of staff involved, and she also worked to erect a "firewall" around the entire effort so those not involved, particularly those who made their homes in Gustavus, would not be "tainted."

Within 10 days of the passage of the Glacier Bay legislation, ADF&G had drafted a "concept outline" of a compensation program. The goal was laudable—to return, to the extent possible, individuals, firms and other entities directly or indirectly affected by the closures and restrictions on commercial fishing in Glacier Bay to their pre-phase-out level of welfare. As envisioned by ADF&G, claims would be divided into three "tiers" depending on when losses would occur. Those claimants who would suffer losses first (those dependent on the Dungeness crab fishery) would be com-

pensated first. Despite the fairly simple precedent set by the Beardslee Islands Dungeness crab fisherman buyout, ADF&G had a very complex vision of the form in which compensation funds might be disbursed: annuities, low-interest loans, extended unemployment insurance, training programs, grants for community facilities or projects, and fisheries research (including fisheries development). The fund was envisioned to be long term; an investment strategy and inflation proofing were concerns. Optimistically, ADF&G expected the NPS to begin paying out first tier claims on December 1, 1999.<sup>928</sup> The little guidance that Senator Stevens had given the NPS was that administrative costs should not exceed five percent of the \$23,000,000 compensation fund. This calculates to only \$1,150,000, an amount almost certainly insufficient to administer the complex, long-term compensation program initially envisioned by ADF&G. Administrative costs for the relatively simple buyout of Dungeness crab fisherman averaged \$8,500 per claimant, less than two percent of what the claimants were paid.<sup>929</sup> The general range of overhead costs for a more typical federal program, by contrast, is 10 to 35 percent.<sup>930</sup>

The staff at ADF&G had drafted the compensation program concept outline on June 1. It was quickly shared with Senator Stevens, who registered his strong disapproval. According to Stevens, the compensation program was not “a social experiment,” but a vehicle to put money in empty pockets.<sup>931</sup> Three days later a letter to Bruce Babbitt from Senator Stevens and Senator Robert Byrd (D-WV) pushed the NPS to consider a much more streamlined and expeditious approach. The senators urged the DOI to “work diligently to have a compensation program in place for those negatively affected by the time fishing is no longer permitted or as soon as possible in the case of processors, communities, businesses and others who may already be suffering from Dungeness crabbing in wilderness closures,” in order to bring an “equitable and expeditious conclusion” to all compensation matters. This didn’t leave much time: had Dungeness crab fishing in the Beardslee Islands not been prohibited, the season would have opened on June 15. Unlike Stevens’s earlier statement, the letter from the two senators said only that administrative costs be kept to a minimum.<sup>932</sup> The only way to accomplish this was to greatly

simplify the compensation program, with the fundamental goal being the distribution of the \$23 million compensation fund as fairly and expeditiously as possible.

Some Alaskans were definitely in a hurry. Pelican Seafoods, which was owned by the Kake Tribal Corp., was struggling. The company had made some unfortunate business decisions, its facilities were run down, and it was burdened with considerable debt. Kake Tribal wanted to sell the operation, but it could find no buyers. On June 14, Gordon Jackson, Chairman, President and CEO of Kake Tribal, penned a letter to Governor Knowles asking that the compensation process for Pelican Seafoods be expedited. Jackson claimed that he had “negotiated several custom processing contracts that minimize risks and all but assures a profitable season if we have sufficient capital to start-up.” According to Jackson, the receipt of a “modest portion of the compensation for which Pelican Seafoods will certainly qualify” would guarantee a profitable season.<sup>933</sup>

Pelican Seafoods was asking for special consideration. The state’s position on such requests was to be supportive, but not to advocate individual claims.<sup>934</sup>

Senator Stevens was also apparently contacted, and in response, he promptly asked the NPS to provide interim compensation to processors who had purchased Dungeness crab from the Beardslee Islands. The NPS was receptive to his request. A July 1 news release by the NPS notes “expedited partial compensation to Dungeness crab processors.”<sup>935</sup> On July 29, the NPS published a notice in the *Federal Register* detailing interim compensation application procedures. Interim compensation was limited to Dungeness crab processors who had purchased Dungeness crab from either the Beardslee Islands or Dundas Bay wilderness areas for at least six years during the period 1987 through 1998.<sup>936</sup> These included Icy Passage Fish, Pelican Seafoods, Point Adolphus Seafoods, and Taku Fisheries (Juneau). The formula used to calculate interim compensation was very simple: each processor’s average yearly purchase of Dungeness crab from Glacier Bay N.P. for the 12 years 1987 through 1998 was multiplied by \$3. The interim compensation plan required the concurrence of the State of Alaska. It was submitted to the state on November 19, 1999 and received concurrence five days later.<sup>937</sup> In February 2000, some

\$576,000 was distributed to the four eligible Dungeness crab processors.<sup>938</sup> This was too late for Kake Tribal: the corporation had filed for reorganization under federal bankruptcy laws in October 1999.<sup>EEEE</sup>

After meeting with state officials in late June 1999, the NPS on July 1 announced the framework for the compensation plan. Key components were opportunities for extensive public involvement, and the involvement of a private mediation firm and an economic consulting firm. The NPS presented a timeline for the development of the compensation program. It was very, very optimistic:

- eligibility criteria for lifetime access permits (LAPs) would be determined by mid-July;
- public notice of interim compensation in mid-July, payments made in the fall;
- newsletter and questionnaire to the public in early August;
- compensation program structure and eligibility criteria in place by late 1999.<sup>939</sup>

The criteria to be used to qualify fishermen for lifetime access permits needed to be addressed quickly. On December 11, 1998, as directed by Congress, the NPS had reopened the public comment on its 1997 proposed rule, including the changes wrought by the October 1998 Glacier Bay legislation. In the May 1999 legislation, Congress wanted to ensure a timely process, so it required the NPS to publish a final rule on commercial fishing in Glacier Bay no later than September 30, 1999. The NPS anticipated that the rule would take effect the following day with the opening of a 12-month LAP application period. One year later, on October 1, 2000, no one who had not been issued an LAP would be permitted to fish commercially in Glacier Bay.

As it worked out, the NPS published an interim rule on August 2, 1999, and provided a 45-day public comment period.<sup>940</sup> The State of Alaska complained bitterly that the comment period needed to be extended because the rule had been published during the height of the fishing season, “the worst possible time for fishermen” to have any opportunity to comment.<sup>941</sup> Exacerbating this, the NPS had been forced to delay mailing copies of the proposal to fishermen and other concerned citizens

for three weeks because government regulations required the mailings to be printed by the Government Printing Office (GPO) or a GPO-approved contractor. The state’s concerns were ignored, but the final rule was not published until October 20, 1999, about three weeks later than Congress had stipulated. This schedule lapse did not delay the implementation of October 1, 2000 restrictions.

Eligible fishermen were to be grandfathered into three fisheries: trolling for salmon, longlining for halibut, and pot and ring-net fishing for Tanner crab. As one would expect, the public’s comments on eligibility requirements covered the spectrum from extremely restrictive to extremely liberal.<sup>942</sup> While there was some early talk by DOI officials of basing a fisherman’s eligibility for LAPs on the 1997 proposed rule to phase out commercial fishing in Glacier Bay—which was participation in a fishery for six of ten years—the staff at Glacier Bay N.P. favored a very liberal granting of permits: anyone who could document a single landing in the relevant fishery in Glacier Bay would be eligible.<sup>943</sup> Such a program would be easy to administer and would minimize ill feelings. As well, given that many of those who would be eligible were thought to no longer actively fish in Glacier Bay, the liberal approach would result in little additional fishing effort.<sup>944</sup> The State of Alaska desired an even more liberal approach; an LAP should be granted to anyone who currently owned a permit to fish for Tanner crab, halibut, or troll salmon, as well as anyone who had any history of commercial fishing in Glacier Bay.<sup>945</sup> These approaches were rejected at the DOI’s Washington, DC office by Don Barry, Assistant Secretary of the Interior for Fish and Wildlife and Parks.<sup>946</sup> Barry favored a considerably more restrictive approach. He may have been concerned that if he accepted the state’s liberal approach he would be perceived by the environmental community as having “sold out.”<sup>947</sup> As well, he may have been concerned about setting a precedent. The final rule on LAPs, published in the *Federal Register* on October 20, 1999, was an intra-department compromise. For the troll salmon and Tanner crab fisheries, fishermen were required to prove three years’ participation in Glacier Bay proper during the 10-year period 1989 through 1998. For the halibut fishery, fishermen were required to prove two years participation in Glacier Bay proper dur-

<sup>EEEE</sup> Kake Tribal emerged from bankruptcy in February 2002.

ing the 7-year period 1992 through 1998. The 7-year qualifying period for halibut was based in large part on the establishment of Glacier Bay proper as a statistical sub-area in 1992.<sup>948</sup> Provision was made for the temporary emergency transfer of an LAP in the case of “illness or disability of a temporary, unexpected and unforeseen nature.”<sup>949</sup>

At first issuance, 165 individuals were awarded LAPs, some for more than one fishery. The distribution was, by fishery: 112 halibut, 64 troll salmon, 35 Tanner crab.<sup>950</sup> Under the NPS’s Glacier Bay 1996 vessel management plan, all vessels entering Glacier Bay during the summer months (June 1 through August 31) were required to have an entry permit. For commercial vessels engaged in commercial fishing, the LAP served as the entry permit. LAPs are renewed every five years as long as the individual stayed active in the fishery.

Though the LAP issue had been officially settled, Glacier Bay Superintendent Tomie Lee continued to lobby to have the LAP qualifying requirements substantially liberalized. In the summer of 2002 she noted two criticisms of the existing system: Glacier Bay was perceived as a “private fishing hole for just a few,” and many elders and older fishermen in Hoonah had been denied LAPs because they had quit fishing or had not fished during the qualifying years and thus could not fish in their ancestral homeland.<sup>951</sup> Officials at the Department of the Interior informed Lee that the issue had been dealt with. The case was closed. End of story. This situation is illustrative of the gulf that sometimes exists between DOI’s headquarters, which has the final say on designing regulations and those in the field who actually implement them. In 2005, however, the NPS re-opened the application process, and, as of December 2006, there were 7 applications pending.<sup>952</sup>

In addition to closing the wilderness areas in the Beardslee Islands and upper Dundas Bay to commercial fishing, the October 1998 legislation also closed other areas to fishing. Johns Hopkins Inlet, Tarr Inlet, Reid Inlet and Geike Inlet were all closed. In addition, the legislation closed the upper reaches of the bay to most fishing—the West Arm north of 58 degrees, 50 minutes north latitude, and the East Arm north of a line drawn from Point Caroline to the east

side of Muir Inlet—with the exception that the Arms were open for “winter” king salmon troll fishery during the period October 1 through April 30.<sup>953</sup> Since the vast majority of salmon trolling in Glacier Bay was historically focused on catching transitory king salmon during the winter season, the agency reasoned that this fishery could continue.

NPS regulations provide for the granting of special-use permits to tenders (fish-buying vessels) to enter Glacier Bay proper, but only to service an authorized fishery. In recent years only Tanner crab have been tendered in Glacier Bay.<sup>953</sup>

In September 1999, the NPS and the State of Alaska formally agreed to cooperate in the timely development and implementation of the compensation program.<sup>954</sup> The ADF&G’s role was to provide essential fishery information, subject to the limits of confidentiality statutes, and to provide concurrence on key aspects of the compensation program structure.<sup>955</sup> The goal of the agencies together was to “optimize benefits of the \$23,000,000 compensation program to mitigate short and long term adverse economic affects of congressionally imposed restrictions on commercial fishing activities in Glacier Bay National Park.”<sup>956</sup> The initial step of their plan was to obtain “information, suggestions, recommendations and ideas from the general public and particularly the affected public and communities on appropriate eligibility criteria, priorities, formulas, and allocations for the authorized compensation funding.”<sup>957</sup>

In the summer of 1999, the NPS detailed Rick Jones from Glen Canyon National Recreation Area to work at Glacier Bay N.P. as an interim administrator. His duties were to help establish the compensation program and to coordinate fisheries issues with ADF&G. Jones, who was not an Alaskan, had no experience in commercial fisheries, but was experienced in program coordination, communications, contracting, and community consensus building. He worked out of the modest Juneau Field Office, which was opened in 1999 and was dedicated specifically to dealing with the compensation program. The Juneau location was more accessible to the public than an office at Glacier Bay would

<sup>948</sup> Alaska’s winter king salmon season can be terminated by ADF&G prior to April 30 if the guideline harvest level (GHL) is reached. (5 AAC 29.080)

have been, and its location facilitated coordination with ADF&G. The office was located in a low-rent area, both to save money and to be less intimidating than a similar office in the Federal Building might have been.

Concurrently, and also at NPS expense, ADF&G hired Dick HofMann for a similar coordinator position. HofMann had 21 years experience fishing commercially in Southeast Alaska, primarily as a troller, and had for eight years been president of the Alaska Trollers Association.<sup>958</sup>

Envisioned was a process that involved a series of facilitated public meetings and workshops in Southeast Alaska. Given the emotion that surrounded the issue, objectivity and impartiality were very important. A number of people would not trust the NPS to be objective or impartial, and it was quickly decided to employ a neutral mediator/facilitator. In October, with concurrence of ADF&G, a contract was signed with RESOLVE, a non-profit organization with offices in Portland, Oregon and Washington, DC that specialized in the resolution of public policy disputes. RESOLVE's function in the public participation process was not to make recommendations, but to ask questions and to summarize and synthesize the views of stakeholders.<sup>959</sup>

RESOLVE was also tasked with hiring a consultant to provide an economic analysis on which to base the compensation program. The NPS and ADF&G together chose the McDowell Group, a Juneau-based economic research and consulting firm that had considerable experience in natural resource issues.

Abby Arnold was RESOLVE's lead person on the Glacier Bay program. One of her first steps in designing a public participation process was to interview by telephone some 40 individuals affected by the closures and restrictions on commercial fishing in Glacier Bay. Arnold wanted to hear their ideas, interests and concerns about what kind of public process would best serve to fairly and expeditiously distribute the compensation funds. As a result of these interviews, the NPS and ADF&G agreed with Arnold that the best way to proceed initially was to schedule informal community open houses and attempt to form a consulting group. Additional public involvement activities would be conducted on an as-needed basis.<sup>960</sup> For those with access to

the Internet, the NPS's website was constantly updated with information on the fisheries and compensation program.

Informal open houses where individuals would have the opportunity to share their ideas and concerns with staff from NPS, ADF&G and the McDowell Group were scheduled in ten Southeast Alaska communities for January and February 2000.<sup>GGGGG</sup> In August 1999, the NPS began publishing and distributing the newsletter *Glacier Bay Update* to provide the status of the compensation plan and other aspects of the Glacier Bay commercial fishing issue. The mailing list for *Glacier Bay Update* contained some 3,400 names.<sup>961</sup> In the December 1999 issue of the *Update*, the NPS gave notice that the development and implementation of the compensation plan was expected to take about two years.<sup>962</sup> Under this schedule, compensation payments would be completed by December 2002. Soon thereafter (February 17, 2000), however, a briefing paper for Secretary of the Interior Bruce Babbitt that seems to have been prepared in the NPS's Alaska Regional Office optimistically stated that payments would be made in the fall of 2000.<sup>963</sup>

The ten community meetings held in Southeast Alaska in January and February 2000 yielded a mixed bag of observations, suggestions, and opinions. Nearly every fisherman expressed concern and/or anger that they were being unnecessarily excluded from Glacier Bay while cruise ship traffic was increasing. A major concern of salmon and halibut fishermen was the loss of access to productive fishing grounds. Tanner and Dungeness crab fishermen were mainly concerned about increased competition on the grounds that remained open to fishing. More than any other community visited, those who attended the Petersburg meeting expressed the sentiment that they were not interested in compensation, they simply wanted to continue fishing as they always had.<sup>964</sup>

Between late April and the first of June, five open-to-the-public conference calls served to keep the public informed about progress being made by the McDowell Group on the economic assessment and to discuss and hear advice about technical issues relating to the compensation plan. In each call, twenty-five to forty individuals participated from eleven community sites. Abby Arnold, of RESOLVE, moderated the calls.

<sup>GGGGG</sup> The communities in which open houses were held were: Angoon, Gustavus, Haines, Hoonah, Juneau, Kake, Pelican, Petersburg, Sitka, and Wrangell.

In late spring, the NPS was reminding fishermen that the deadline for applying for LAPs was October 1, 2000. It was also soliciting advice from the public on what might constitute fair and reasonable eligibility criteria for receiving compensation. The deadline for public comment on the compensation plan was November 30, 2000. Suggestions received before August 1 would be considered for inclusion in the draft plan that was scheduled to be distributed in mid-September. According to the NPS's schedule, the compensation plan would be completed and published in the *Federal Register* in January 2001.

Anticipated total administrative cost for developing and implementing the compensation program was \$925,000, \$317,400 of which was to cover ADF&G's expenses associated with the project.<sup>965</sup> At the insistence of Glacier Bay superintendent Lee, administrative costs were paid from two sources: the residual of the \$3 million that had been appropriated in May 1999 for the buyout of Dungeness crab fishermen, and out of the general operating expenses for the Glacier Bay N.P. and the NPS regional office in Anchorage. Some costs not charged to the program were time dedicated directly to the program by the park superintendent, assistant superintendent, administrative officer, clerks, other park employees, regional office support staff, and the attorney of the Regional Solicitor's Office.<sup>966</sup> To the NPS's credit, the \$23 million compensation fund was kept completely intact.

### **Contribution of Crewmembers**

To the bureaucracies that regulate commercial fishing in Alaska, crewmembers are largely ignored. They are required to purchase a license, but other than that, these essential people are largely non-entities. As Alaska's limited entry program was configured, only the captains of fishing vessels received limited entry permits, despite the fact that a crewmember might have worked on the vessel every year that qualified the captain for a permit. The rules were the same for the federally-managed halibut IFQ program. Both limited entry permits and IFQs are marketable, and the rights that their ownership confers can be worth hundreds of thousands of dollars. For their critical part in the industry, crewmembers received nothing except payment for their day-to-day duties.

As the end of 1999 approached at Glacier Bay, Dungeness crab captains had largely been

compensated, and processors of Dungeness crab were scheduled to receive interim compensation. Sensing the injustice of being ignored, crewmembers who had lost their jobs because of the buyout and closure notified Senator Stevens of their predicament. Stevens's office in turn contacted the NPS, and learned that the NPS was reluctant to make additional interim payments until the compensation plan was developed.<sup>967</sup> Senator Stevens was not satisfied with this answer, and in early December he sent a letter to the DOI requesting interim compensation for losses incurred during the 1999 fishing year for Dungeness crab crewmembers who had worked during any two of the years 1996 through 1998 for individuals eligible for the buyout. (Turnover among crewmembers is usually fairly frequent. The brief eligibility period best reflected those actually active in the fishery.) Stevens noted that he had been advised that individual crewmember losses for the 1999 fishing year were likely to be in the \$6,000 to \$10,000 range.<sup>968</sup> The following month the NPS informed Senator Stevens that his request would be honored. Qualifying crewmembers would receive interim payments limited to \$10,000 per individual.<sup>969</sup>

Also in January 2000, the NPS decided, with the agreement of the state, that no additional interim payments would be made. There was concern among some involved with the development of the compensation plan that eligibility requirements for the plan would be established before the public process was complete, and that too much of the compensation fund would be distributed before the final program was developed and approved.<sup>970</sup>

In February 2000, Superintendent Lee wrote Senator Stevens to inform him that the NPS expected to begin accepting claims in January 2001.<sup>971</sup> This was about a year later than had been anticipated nine months earlier. And, as events would show, the date that Lee set would be far from the last time that the schedule was pushed back. The failure to meet deadlines wasn't due to incompetence or intransigence on the part of the NPS. It was due to the fact that the agency underestimated the difficulty of pushing this unique and complicated program through the federal bureaucracy.

### **Interim Compensation Redux and the Buy N' Pack Amendment**

In the spring of 2000, Senator Stevens's office was under pressure to provide a second

interim compensation payment to those Dungeness crab processors and crewmembers who had qualified for the first payment. There was also pressure from elsewhere. David Bowen, owner of Buy N' Pack Seafoods in Hoonah, had written to Tomie Lee requesting an interim payment based on his purchases of Dungeness crab from Glacier Bay. Bowen's request was denied because the legislation that provided for interim compensation stipulated that only those processors that had purchased Dungeness crab from Glacier Bay for at least six of the years between 1987 and 1998 were eligible. Buy N' Pack had begun operating in 1994, and had purchased Dungeness crab from Glacier Bay for four years. On June 8, 2000 a frustrated Bowen sent a letter to the editor of the *Juneau Empire*. The paper printed the letter under the title "Unhappy in Hoonah." In it Bowen complained that his business, which he claimed processed "hundreds of thousands of pounds of Pacific Cod and Dungeness Crab from Glacier Bay," was being forced into bankruptcy because the NPS would not consider granting him interim compensation. He went on to "thank" Senator Stevens for "driving the last nail in the coffin for my business, my family and several other employees' lives."<sup>972</sup>

There is no doubt that Senator Stevens's sympathies were with those affected by the restrictions on commercial fishing in Glacier Bay N.P. The senator was frustrated at the slow pace of the compensation program, and his office was prodding the NPS to speed up compensation in any way it could.<sup>973</sup> The senator was also rankled by the NPS's decision to make no additional interim compensation payments. Because the NPS had pushed back the anticipated date for completion of the compensation program, Stevens felt that additional interim payments were warranted.<sup>974</sup> Since the NPS was not willing to honor a request by him for additional interim compensation, Stevens chose to force the agency to do so through legislation. The Military Construction Appropriations Act, must-pass legislation considered essential for national security, was at that time in conference committee. Despite the protests of Senator John McCain, Stevens inserted a special provision into the legislation that granted a second interim payment to Dungeness crab processors and crewmen. As well he added a provision that directed the NPS to pay interim compensation to Buy N' Pack Seafoods "which has been severely and

negatively impacted by restrictions on fishing in Glacier Bay National Park." The interim payment for Buy N' Pack Seafoods was to be for estimated 1999 and 2000 losses based on an average net income derived from processing product harvested from Glacier Bay fisheries from 1995 through 1998.<sup>975</sup> The legislation was signed by President Clinton on July 13, 2000.

The NPS contracted the Mikunda, Cottrell & Co. accounting firm to calculate Buy N' Pack's average net income. It was a difficult chore: Buy N' Pack's accounting records for 1995 had been stored on a hard drive that was destroyed by water that was used to put out a fire in the company's office. There was no backup, and the company's accountant had moved and had left no forwarding address. Compounding this, Buy N' Pack consisted of multiple business operations that included a mechanic's shop, a welding shop and an equipment rental business. The company's bookkeeping practices made it impossible to separate the revenues and expenses of the various business operations. On top of everything else, Bowen submitted a number of fish tickets marked as representing fish caught in areas other than Glacier Bay, but he insisted that they actually represented fish caught in Glacier Bay. Mikunda, Cottrell estimated the company's income the best it could based on the information available.<sup>976</sup> Based on this estimate, early in 2001 an interim payment of nearly \$110,000 was made to Buy N' Pack Seafoods.<sup>977</sup>

The use of estimated income to secure an interim payment caused Buy N' Pack something of a problem when it filed a claim under the Glacier Bay Commercial Fishing Compensation Program. The program required documentation, not estimates. The interim compensation paid to Buy N' Pack Seafoods considerably exceeded the losses that the company could document, and placed the NPS in the position of demanding a refund of more than \$100,000 in excess compensation.<sup>978</sup> Buy N' Pack Seafoods was eventually spared refunding the money by a 14-word amendment quietly inserted in 2003 into the Interior appropriations bill for 2004 by Senator Stevens.<sup>979</sup> The amendment stated that recipients of interim compensation in excess of their final compensation need not refund the excess. The provision was supported by the NPS, which wanted to extricate itself from an awkward situation. Four Dungeness crab vessel crewmembers who had received



excess interim compensation also benefited from this legislation.

### **Putting a Price on the Losses: An Economic Assessment**

In about March 2000, Clark Millett replaced Rick Jones as manager of the Glacier Bay compensation and lifetime access permit programs. Millett had worked as a commercial fisherman for some 20 years, and had spent an almost equal amount of time working in various public sector jobs.<sup>980</sup> In June 2000, Randy King, who had been involved in the Glacier Bay commercial fishing issue since arriving at Bartlett Cove in the spring of 1990, transferred to the NPS regional office in Denver. The same month King left, Superintendent Lee hired Jed Davis as deputy superintendent to assist with the workload.<sup>HHHHH</sup> Despite his new position, King remained actively engaged in the Glacier Bay issue through the end of the year.<sup>981</sup>

After submitting a draft for public comment in May, the McDowell Group completed the “Glacier Bay Compensation Plan Economic Assessment” on August 1, 2000. Within the limitations of the data available, the study measured the future losses that could be suffered by commercial fishermen, crewmembers, processors and their employees, businesses providing goods and services to fishermen and processors, and communities. It determined that approximately \$2.4 million in seafood had been harvested from Glacier Bay annually in the recent past.<sup>IIIII</sup> The Tanner crab fishery, despite the short season, was determined to be Glacier Bay’s most valuable. Its annual value was approximately \$900,000. Tanner crab was followed by halibut (\$800,000), Dungeness crab (\$500,000), king salmon (\$100,000), groundfish (\$50,000) and king crab (\$20,000).<sup>982</sup>

Economic losses due to the termination and phase-out of fisheries in Glacier Bay would continue to occur over some 25 to 30 years or more as LAP holders retired or died. The economic assessment predicted economic losses 75 years in the future, which was effectively equivalent to “in perpetuity.” The McDowell Group determined that potential worst-case scenario losses ranged from \$28.6 million to \$51.6 million, depending on the discount (interest) rate used. Actual predicted losses ranged from \$23 million to \$40 million,

again depending on the discount rate used. The McDowell Group cautioned that it was “critically important” to recognize the uncertainty associated with its study. Data limitations, future actions by fishery managers, as well as the future condition of fish stocks and a host of other factors would determine actual losses.<sup>983</sup>

Given that the NPS had a finite \$23 million in the compensation fund, it was less interested in total losses than it was in the distribution of those losses between the categories of claimants. The McDowell Group information would be used to guide the distribution of compensation funds among the various categories. McDowell determined that nearly half the losses (48.9%) would be borne by harvest-related entities—permit holders, crewmembers and harvest-support businesses. Thirty-eight percent would be borne by processing-related entities, including the State of Alaska, which would collect less fish tax. The remaining 13.1% would be borne by communities.<sup>984</sup>

### **Draft Compensation Plan**

The draft compensation plan was completed in October 2000. The initial ADF&G proposal for tiered claims had been dropped in favor of putting all claimants on the same as-yet-undetermined payment schedule. Compensation vehicles such as annuities, low-interest loans, extended unemployment insurance, training programs, and grants for community facilities or projects were dropped in favor of simple monetary compensation payments. Under the draft compensation plan, the NPS would distribute all compensation as soon as possible and without consideration of future generations.

The draft plan was based on the “presumption that the individuals most directly affected by current and future restrictions on commercial fishing in Glacier Bay are those with some recent history of participation in Glacier Bay fisheries.”<sup>985</sup> To reflect “recent history,” the NPS chose the 10-year base period 1989 through 1998, the same base period as had been used for fishermen to qualify for LAPs in the troll salmon and Tanner crab fisheries. Any member of an affected group with any level of earnings from Glacier Bay commercial fisheries during that time period would be eligible for compensation. The NPS was restrictive, however,

<sup>HHHHH</sup> Davis represented the NPS at numerous Gustavus Community Association meetings, where his exceptional candor was much appreciated. (Gustavus had no official city government until it was incorporated as a city in 2004.)

<sup>IIIII</sup> The calculation was based on the annual first wholesale value of the different seafood products.

in what it considered an “affected group.” Congress had authorized compensation to fish processors, fishing vessel crew members, and communities as well as “others negatively affected by restrictions on fishing in Glacier Bay National Park.”<sup>986</sup> The NPS basically interpreted “others negatively affected” as harvest and processing support businesses. Typical among these would be tenders, marine repair shops, air freight transporters, owners of commercial fishing vessels leased to permit holders, and “others” that could document a financial interest in commercial fishing in Glacier Bay.<sup>987</sup> It seemed that a business not directly related to the fishing industry that suffered because of a reduction in economic activity because of the closures and restrictions on commercial fishing in Glacier Bay would not be eligible. The compensation fund would be distributed to affected groups according to the ratio arrived at in the McDowell Group’s economic assessment. Within those groups, individual claimants would be compensated in proportion to their “share” of what was interpreted as losses.

In summary, the draft compensation plan’s key provisions were as follows:

- Claimants would be required to show current participation in a fishery and be able to document activity in Glacier Bay during the 10-year base period, 1989 through 1998;
- Because of the difficulty of demonstrating actual losses, compensation would be proportional to past earnings from Glacier Bay;
- Compensation to permit holders would be adjusted for age because younger permit holders would be expected to have a longer career in a fishery and thus suffer greater future losses than fishermen close to retirement;
- Compensation to processors would be proportional to past marginal income from Glacier Bay production during the 10-year base period of 1989 through 1998;
- Compensation to communities would depend on several factors, including number of resident Glacier Bay fishermen and processors, proximity to Glacier Bay, and the economic diversity of the affected community;

- Limited entry permit holders in the Southeast Alaska Dungeness and Tanner crab fisheries would be compensated for predicted declines in permit values.

Two aspects of this plan complicated the issue: the consideration of age to determine fishermen’s compensation, and the use of marginal income to determine processor compensation. The consideration of a fisherman’s age in calculating fishermen’s compensation was an effort to fairly apportion future losses. Younger fishermen could be expected to have more future income than fishermen near retirement.<sup>988</sup> Some argued, however, that this sort of formula should have applied to all claimants.

In choosing to use marginal income to determine processor compensation, the NPS underestimated the difficulty of calculating marginal income where catch data was vague and financial records sometimes non-existent. But others stated that commercial fishing enterprises were businesses. Individual vessels have different costs of operation. Per pound of fish caught, the net income of some is considerably higher than experienced by others. Why, they argued, shouldn’t the compensation of fishermen—as well as processors—be based on marginal income?

As the McDowell Group’s economic assessment was an estimate, the draft compensation plan was only a framework for the process that would follow. It was all subject to the truthing that would occur when applications for compensation would be analyzed. Would actual applications reflect the division of future costs as portrayed in the environmental assessment? The NPS was not sure, and the agency retained the right to make adjustments when new information became available.

The draft plan acknowledged but did not take into consideration the value of LAPs, which, though not marketable, seems likely to increase as competition in Glacier Bay thins. It also acknowledged that since the compensation plan was based on past production, a few fishermen, probably all of whom would receive LAPs, would receive the bulk of the compensation money earmarked for their fishery.<sup>989</sup>

LAP holders found themselves in a win-win-win situation. They could continue fishing in Glacier Bay largely as they had, but with less competition, and would receive compensation money to boot. For those individuals who received large compensation payments—twenty

six permit holders each received more than \$100,000, and three of these each received more than \$500,000—“win-win-windfall” is perhaps a more accurate description. Some fishermen rationalized their good fortune: the more the NPS was forced to “bleed,” the less likely it would again attempt to terminate well-managed fisheries for preservationist ends. But there is an Achilles heel that may yet come into play: preservationist-minded individuals as well as advocates of government fiscal responsibility have noted that, since LAP holders have already been compensated, future congressional legislation could terminate grandfathered fisheries at no additional cost to taxpayers.

Furthermore, a halibut fisherman with an LAP for Glacier Bay could fish not only his IFQ poundage (see page ?), but that of the same (or permissible) category held by any other fisherman. For example, an LAP holder with, say, an IFQ quota of 2,000 pounds, could contract with another fisherman with 3,000 pounds of similar quota and catch a total of 5,000 pounds of halibut in Glacier Bay. (National Marine Fisheries Service regulations require the IFQ holder to be aboard the vessel.)

To provide the public with an opportunity to comment on the plan, a round of forums in Southeast Alaska communities were held in November 2000.

In December 2000, Ron Dick was contracted to succeed Clark Millett as manager of the Glacier Bay Commercial Fishing Compensation Program. Together with an administrative assistant, Dick worked out of the NPS’s Juneau Field Office.

### **Senator Murkowski’s Final Effort**

Senator Murkowski was not idle while the NPS worked to design a compensation plan. He was still working to pass the “Glacier Bay Fisheries Act” (S. 501) that he and Senator Stevens had introduced in March 1999. (see page ???) Murkowski managed to keep the legislation alive, though it had little prospect of becoming law. Sensing it was the best he could do, Murkowski eventually removed the language to which the NPS and many of his fellow Congressmen objected, and in November 1999 the legislation passed the Senate. It was renamed the “Glacier Bay National Park Resource Management Act of 1999.”<sup>990</sup> The commercial fishing provision of the bill

required that once funds were made available, the Secretary of the Interior, in consultation with the State of Alaska, the National Marine Fisheries Service, the International Pacific Halibut Commission and other affected agencies, was to develop a plan for a comprehensive multi-agency commercial fisheries research and monitoring program in Glacier Bay N.P. The goal of the program would be to evaluate the health of fisheries resources, and determine the effect of commercial fishing on productivity, diversity, sustainability and “park resources and values.” As chairman of the Senate Energy and Natural Resources Committee, Murkowski held an oversight hearing on August 10, 2000 in Juneau to hear testimony on Glacier Bay issues, among them the restrictions on commercial fishing and the implementation of the commercial fishing compensation program.<sup>991</sup> Murkowski was the only senator present, and the only speaker who did not support his position was Destry Jarvis, a senior advisor at the Department of the Interior.<sup>992</sup>

In attempting to build support for his various Glacier Bay bills, Senator Murkowski had continually tried to marry Native subsistence issues with the commercial fishing issue. No doubt Murkowski himself had some genuine sympathy and concern for the Hoonah people, but he seemed to have been strategizing that some in Congress who leaned against supporting the continuation of commercial fishing in Glacier Bay might be persuaded to do so out of sympathy for Glacier Bay’s Native people, whom he continually portrayed as having been wronged by a callous and insensitive NPS. Senator Murkowski’s early decision to try to build regional Native support for his legislation not with the Hoonah Indian Association, but through Sealaska Corporation (of which his reliable supporter, Robert Loescher, was CEO) may have hurt his effort. Sealaska Corporation was organized under the Alaska Native Claims Settlement Act as a for-profit commercial entity. The Hoonah Indian Association, in contrast, attempts to represent the Huna people’s spiritual and cultural as well as economic attachments to Glacier Bay.<sup>993</sup>

Two fishermen and Sealaska’s Robert Loescher were invited to speak at Senator Murkowski’s hearing. The Hoonah Indian Association was not invited. Johanna Dybdahl, HIA’s tribal administrator, complained to

<sup>993</sup> Sealaska clearcut vast areas of forestland near Hoonah that it had obtained under the 1971 Alaska Native Claims Settlement Act. This fostered resentment against the corporation among some in Hoonah’s Native community.

Murkowski's office about routinely being left out of Glacier Bay discussions:<sup>KKKKK</sup>

The Hoonah Indian Association would like it to be known that we take particular exception to discussions of Glacier Bay regarding, in specific, commercial fishing, with no involvement or meetings with the tribe. For the past year bills have been introduced and much discussion regarding the proposed closure for commercial fisheries has been brought before Congress. It has been a well documented fact in Congress that Glacier Bay is the traditional homeland of the Huna Tlingit yet our position has never been asked for [and] representation from our tribal government [never] been solicited.

Dybdahl went on to add that "Glacier Bay is not the traditional homeland of Sealaska Corp. To speak of Glacier Bay without consulting the tribal government is an affront. We are the directly affected tribal government and any discussion or proposals regarding Glacier Bay should come through the Hoonah Indian Association."<sup>993</sup> For its part, the NPS considered Loescher's testimony at hearings to represent his views, not those of all Hoonah Tlingits.<sup>994</sup>

Senator Murkowski's hearing at Juneau was of little consequence. That fall, nearly a year after it was introduced and shorn of the provisions the NPS found objectionable, S. 501, the innocuous remnant of his final attempt to force his ideology on the NPS at Glacier Bay, was passed in the House by voice vote. The bill was signed into law by President Clinton on November 7, 2000.<sup>995</sup> Congress, however, has never funded the research and monitoring program.

On May 14, 2001, Rob Bosworth and Richard Hofmann, representing the State of Alaska, hand delivered a letter of conditional concurrence with the compensation plan to the NPS. According to Bosworth and Hofmann, the plan "appears reasonable in the context of the overall program and statutory guidance."<sup>996</sup> Soon thereafter, the NPS desk officer in Washington, DC hand carried a copy of the plan

to the President's Office of Management and Budget (OMB). OMB's approval was required to ensure that the plan was consistent with the president's budget and administration policies.<sup>997</sup> To the great frustration of Glacier Bay superintendent Tomie Lee as well as individual claimants, there was absolutely no sense of urgency at OMB to approve the plan. Senator Stevens was asked to help the process along, but he was reluctant to interfere in what was a White House matter. Approval was finally received on August 9, 2001.<sup>998</sup>

On behalf of the State of Alaska, ADF&G Commissioner Frank Rue provided written concurrence with the final compensation plan on September 5, 2001.<sup>999</sup> The plan's stated goal was "to fairly compensate those negatively affected within the constraints of the available funding."<sup>1000</sup> While its fundamentals were the same as in the draft, the final plan was considerably simpler in two respects: compensation to permit holders would be proportional to past earnings from Glacier Bay, with no consideration of age; and compensation to processors was proportional to past gross earnings—not marginal profit—from Glacier Bay production. There were, as well, several other significant changes:

- The basis on which community compensation would be determined was modified. Among the factors that would be taken in consideration were: number of resident Glacier Bay fishermen, proximity to Glacier Bay, percentage of residents' catch derived from Glacier Bay, and percentage of locally processed seafood that was from Glacier Bay.
- Under the category of "others negatively affected," support business were more broadly defined to include those who provided indirect goods or services to commercial fishermen or seafood processors who were dependent on Glacier Bay. Eligible were grocery stores, restaurants, and laundries. This category was also intended to encompass any individual or business not included in the other categories.
- A special program was set up to reduce the number of Tanner crab permits in Southeast Alaska to reduce the displace-

<sup>KKKKK</sup> Early in 1998, HIA passed a resolution that requested "recognition [of HIA] as a tribal government ... be given in all regulations now and in the future regarding Glacier Bay." Copies of the resolution were sent to "the Alaska Delegation and all interested parties."

ment effect caused by restrictions in Glacier Bay.

Though not written into the compensation plan, it was understood by both the NPS and the State of Alaska that some of the economic assumptions in the plan might not hold up once applications and supporting documents were received. Money might have to be shifted between categories in order to provide compensation on an equal-ratio basis.<sup>1001</sup>

### **How Not to Not Buy Out Tanner Crab Fishermen**

Because the ADF&G guideline harvest level for Southeast Alaska's Tanner crab fishery was expected to be reduced commensurate with the loss of Glacier Bay's production, all holders of limited entry permits for the Southeast Alaska fishery—whether they fished in Glacier Bay or not—were to be compensated. The Petersburg Vessel Owners Association (PVOA) calculated that 31 active Tanner crab fishermen had fished in Glacier Bay. Of these, ten would not qualify for LAPs and were immediately displaced. Twenty-one others qualified for LAPs but had lost access to some productive grounds in Glacier Bay that were now closed to commercial fishing. This added to the displacement effect. The PVOA suggested that compensation funds be used to immediately retire some permits. The suggested vehicle was an inherently fair low bid process in which willing permit holders would submit a "bid" value for their permit. The NPS would then select as many of the lowest bids as funds allowed.

The NPS was not keen on such a program, in part because Congress had mandated a compensation program for Tanner crab fishermen, not a buyout program. Dick Hofmann at ADF&G, however, was very insistent that there be a Tanner crab permit buyout program. Alaska's Commercial Fisheries Entry Commission (CFEC) felt likewise. CFEC had its reasons for supporting a buyout.

When the CFEC limited entry to the Southeast Alaska Tanner crab fishery in 1984, it issued two basic categories of permits. Where there was no question of eligibility, a permanent permit was issued. Where there were questions of eligibility, an interim permit was issued. Each interim permit was subject to review, after which it could be converted to a permanent permit or eliminated. As of 1999, fully 71 percent of the Southeast Alaska Tanner

crab permits were of the interim variety, and it looked to be awhile before the CFEC would be able to review them and make final determinations.<sup>1002</sup> An NPS buyout program would do some of CFEC's work by eliminating a number of permits considered excess.

Under pressure by ADF&G and the CFEC, the NPS reluctantly agreed to incorporate a Tanner crab permit buyout program into the compensation program. In structuring the buyout, the NPS reasoned that if the Guideline Harvest Level (GHL) for Tanner crab in Southeast Alaska was reduced ten percent to reflect the loss of production from Glacier Bay, the value of limited entry permits would decline accordingly. Based on a GHL reduction of ten percent, an analysis by the McDowell Group determined the present value (year 2001) of the lost permit values to be about \$847,000. In its final compensation plan, the NPS set aside this amount from the fund designated for compensation of Tanner crab permit holders. The money would be used to reduce the number of active permits through a sealed low-bid process, but the permit reduction would be triggered only if a minimum of seven permits could be retired. A maximum of ten permits would be retired.

There was, however, a major complication. For buyout purposes, the NPS could not legally distinguish between permanent and interim permits. This raised concern among the Tanner crab fleet that individuals whose permit was likely to be denied might have buyout bids accepted. If the NPS purchased such a permit there would be less benefit to each of the remaining fishermen.<sup>1003</sup>

The buyout nevertheless proceeded and ten "bids"—all but one for interim permits—were accepted, the highest value of which was \$80,000.<sup>1004</sup> Despite the fact that the proposal for the Tanner crab permit buyout originated with fishermen, it did not sit well with at least some crab fishermen. They were concerned that the buyout would take money that would have otherwise been split among all of the Tanner crab permit holders, and formalized their objections in the administrative appeal process. The NPS Alaska Regional Director's office saw merit in their reasoning, and, despite the fact that bids had already been accepted, the agency scuttled the buyout plan. The \$847,000 was returned to the compensation fund and distributed equally to all Tanner crab permit holders in Southeast Alaska.

But the story was not yet over. Seven of those whose buyout bids had been accepted jointly sued the NPS for breach of contract. With the concurrence of the NPS, the Departments of Justice and Interior agreed to settle the case out of court. The seven individuals who sued were paid their bid amounts, but were not, however, required to surrender their permits. Residual administrative funds from the Dungeness crab buyout were used to make the payments.<sup>1005</sup>

### The Compensation Process Begins

Notice was filed in the Federal Register on September 28, 2001 that applications for compensation would be accepted for a 120-day period, until January 28, 2002.<sup>1006</sup> After an analysis and recommendations by staff, the final determination for each application would be made by the park superintendent. Eligible applicants would then be provided with an estimated compensation amount that was subject to change once all administrative appeals were decided. The appeal period was to last 60 days. After the appeal hearings were complete, the NPS Alaska Regional Director would affirm, reverse, or modify the superintendent's decision and explain the basis of the decision in writing. Payments were to be made by electronic transfer after the administrative appeal process was completed.

The NPS received 837 applications prior to the January 2002 deadline and would receive 190 more before the compensation process was completed.<sup>1007</sup> In many cases, a single individual filed more than one claim. (Many fishermen, for instance, participate in multiple fisheries.) The claims ranged from less than one hundred dollars by a part-time processor employee, to a whopping \$200 million by the City of Petersburg.

With the applications in hand, the NPS recognized that there were, as expected, disproportionate compensation amounts in some categories. Most glaring was for groundfish processors, which, according to the plan, were scheduled to be awarded a total of \$575,000. Gross profits from the fishery, as documented by applicants, did not warrant nearly so much

compensation. If the compensation plan was adhered to, Hoonah Cold Storage would have received more than \$500,000 in compensation for \$5,623 in gross profits from processing groundfish. Likewise, Excursion Inlet Packing would have been compensated more than \$66,000 for \$728 in gross profits from groundfish processing. Common sense and the NPS's goal of fairness left no doubt that a change in the amount of compensation that was to be awarded to this category of processors was warranted.

At a meeting in early March, DOI solicitor Joe Darnell assured the NPS that it had, in the words of the compensation program manager Ron Dick, "some discretion" in moving funds around to correct for disproportionate compensation amounts among categories. With ADF&G's Dick HofMann watching, the NPS then made changes—some very substantial—to the distribution for each compensation category.<sup>1007</sup> The laudable goal was to provide equal-ratio compensation to all claimants.

A legal challenge later arose, however, over whether the changes amounted to a materially significant modification of the compensation plan that, without the formal concurrence of a high official of the State of Alaska, rendered it illegal. The District Court in Alaska ruled in 2006 that this was not the case, that ADF&G Commissioner Frank Rue had delegated the authority to HofMann to determine what would constitute a change to the plan that would require the NPS to seek additional concurrence. HofMann had always considered equal-ratio compensation to be integral to the compensation plan, so saw no need to for additional State of Alaska concurrence.<sup>1008</sup> The District Court's decision may be appealed.

In mid-April, 2002, the NPS announced that it had approved 531 claims and had initially denied 306, mostly due to incomplete applications. A total of 633 of the claims were ultimately approved. Of those, 230 were fishing permit holders, 198 crew members, 35 processors, 96 processor employees, 7 communities, 62 support businesses, and 5 were for lost fish tax revenues.<sup>1009</sup> All approved applicants were Alaskans, Alaska communities, or Alaska-based businesses. Of the \$23 million

<sup>1005</sup> The author knows of one fisherman, a troller with a considerable history in Glacier Bay, who—as a matter of principal—chose not to apply for compensation. He just wanted the right to continue fishing as he had in Glacier Bay, and to receive an LAP to do so.

<sup>1006</sup> The State of Alaska collects a 3% "raw fish tax" on most fish caught in southeast Alaska. Half of this is returned to the city in which it is collected to be used for the construction and maintenance of fisheries-related infrastructure, such as docks.

in the compensation fund, \$20.25 million was scheduled to be distributed to successful claimants, leaving \$2.75 million (12 percent) as a reserve for successful appellants.<sup>1010</sup> Some in the NPS thought the reserve might be inadequate.

In May 2002, Frank Rue, commissioner of ADF&G, contacted Senator Stevens, citing an NPS analysis that demonstrated a need for an additional \$5.8 million in compensation funds. The funding was needed to make payments to applicants who “may be successful in the appeal process” without reducing what had been determined to be fair compensation to other applicants. Stevens replied that the federal budget was “proving to be extremely tight, making additional funds unlikely.”<sup>1011</sup>

Rue’s was not the first request to increase the compensation fund. Some legitimately thought \$23 million would not be enough, while others simply felt that more was always better, that those who were affected by the closures and restrictions on commercial fishing in Glacier Bay were entitled to as much as they could get. After all, once the phase-out period was complete, Glacier Bay would be closed to commercial fishing forever. No matter what the real sentiments of the state were, it was politically popular in Southeast Alaska to advocate for an increase.

To discuss the size of the compensation package, Rob Arnberger, who had replaced Bob Barbee as NPS Alaska Regional Director, met with Senator Stevens in January 2001. The NPS is not legally permitted to lobby Congress, but the two were reported to have discussed a \$15 to \$20 million increase in the compensation fund, which Senator Stevens apparently supported.<sup>1012</sup> Then, in May 2001, Rob Bosworth and Richard Hofmann sent a letter to the NPS. They noted that Jeff Hartman’s 1999 estimate that losses stemming from restrictions on commercial fishing in Glacier Bay would range from \$16 million to \$23 million, was “preliminary.” Bosworth and Hofmann believed compensation should be based on the more comprehensive economic assessment produced by the McDowell Group, which predicted the present value of the actual losses from the closures and restrictions on commercial fishing in Glacier Bay to range from \$23 million to \$40 million. In the worst-case scenario the losses could exceed

\$50 million.<sup>NNNNN 1013</sup> The appropriations for buyouts and compensation had thus far totaled \$31 million. Bosworth and Hofmann urged the NPS to request from Congress a supplemental appropriation to provide an unspecified amount of additional compensation funding.<sup>1014</sup> The funding was not forthcoming. Those affected by the restrictions and closures in Glacier Bay would have to make do with \$31 million. At least the state could point to having supported requests for additional money.

By the June 4, 2002 cut-off date, 367 individuals chose to administratively appeal their awards. Most of the appeals were relatively simple, but 43 were determined to be of medium complexity and 12 were difficult or very complex. Of those who appealed, 225 requested a hearing. Hearing officers from the DOI Office of Hearings and Appeals conducted 75 in-person hearings in Juneau in October and November, 2002. They also conducted 150 telephonic hearings. About half the appellants were represented by an attorney. (Four attorneys shared all the work.)

Once the hearings were completed, the hearing officers forwarded their recommendations to Rob Arnberger, NPS Alaska regional director, who had the final say in approving, modifying, or denying the appeals. Arnberger approved about 60 percent.<sup>1015</sup>

On March 19, 2003 the federal government electronically transferred \$23,000,000 into the bank accounts of 536 fishermen, support business operators, and communities that had been successful in filing claims against the NPS for the closures and restrictions on commercial fishing in Glacier Bay. Although the vast majority of successful claimants were closely related to the fishing industry, there were among them a liquor store in Petersburg, a tavern in Pelican, and a golf course in Gustavus. Two “highliner” halibut fishermen, one from Wrangell and the other from Petersburg, were each awarded more than \$500,000 in compensation. Both received Glacier Bay LAPs, and one continues to fish in Glacier Bay. The “losses” of these individuals consist of not being able to fish in places—such as the Hugh Miller Inlet complex—that were closed to commercial fishing by the 1998 legislation, and, because LAPs are non-transferable,

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<sup>NNNNN</sup> The NPS in August 1999 estimated that the economic effects (direct, indirect, and induced) of the establishment of LAP eligibility conditions established in the interim rule for Glacier Bay’s halibut, Tanner crab, and salmon troll fisheries had a present value of \$9.2 million. The agency considered this estimate to be conservative.

the inability to pass their knowledge and access along to heirs or new owners.

In April 2003, to correct administrative errors and overlooked applications, seven claimants were compensated a total of \$212,989. The payments were drawn from remaining administrative funds.<sup>1016</sup>

Not everyone was happy with the compensation program process or results, but dissatisfaction was manifested more in personal grumbling rather than in a substantial organized effort. The Central Council of the Tlingit and Haida Indian Tribes of Alaska complained very late in the process that the compensation program was “inconsistent,” that critical information regarding application requirements was inaccurately communicated by the NPS, and that applications had been denied to many individuals with “lifetimes of experience fishing in Glacier Bay.” As well, the council stated that many members of the local fishing community were skeptical “of the approval of so many applications from outside the area that are believed by local fishermen to be based on unsubstantiated claims.”<sup>1017</sup> This concern may be addressed at some point in the future if the federal government’s General Accountability Office (GAO), which gathered some information early on, audits the Glacier Bay compensation program. On an individual basis, some halibut fishermen who do not have access to Glacier Bay resent the fact that some of their fellow fishermen had received compensation and were still able to fish in the bay. Additionally, there is at the time of this writing one active lawsuit, that of Dan Foley (Icy Passage Fish), who claimed he did not receive enough compensation. The District Court in Alaska found merit in his claim and ordered the NPS to recalculate his compensation amount.<sup>1018</sup> The NPS is currently doing the recalculation.

Whether some individuals consider it fair or not, the fact is that the NPS listened closely to the public when it designed the Glacier Bay compensation plan. There was a comprehensive public process to inform the public and seek its input, a process that included numerous public meetings throughout Southeast Alaska as well

as meetings in Anchorage and Seattle. Within the constraints placed on it by Congress and with the concurrence of the State of Alaska, the agency by and large gave Southeast Alaska the compensation program its federal representatives demanded.

### LAPs and the Future

Given the finite number of LAP holders, one would expect the commercial fishing effort in Glacier Bay to gradually decline as the holders retire or die.<sup>00000</sup> At least in the short term, this is not necessarily the case. In its LAP program, the NPS created an exclusive pool of fishermen who have the option to fish in Glacier Bay, where they know competition will be limited.<sup>ppppp</sup> This may have been a factor in the increase in the halibut effort and catch in Glacier Bay since 2002, a year after the LAP program effectively commenced. During 2002, 29 vessels fished halibut in Glacier Bay and caught some 254,000 pounds (dressed weight) of halibut. Two years later, 43 vessels fished, and the catch had increased to nearly 500,000 pounds. An additional factor contributing to the increased effort and catch may simply have been good fishing. As well, the fishing of multiple quota shares aboard a single vessel, and, to a much lesser extent, individual LAP-holding fishermen increasing their halibut quota shares, may have contributed to the increased harvest.

Management actions by the International Pacific Halibut Commission (IPHC) will—at least in the near term—likely reduce the commercial longline halibut catch in Glacier Bay. In 2007, due to lower halibut stocks, the Commission substantially reduced the guideline harvest level (GHL) in Area 2C, which includes Glacier Bay. A further reduction was made for the 2008 season, and the Commission has proposed an additional reduction for 2009. If, as expected, the proposed 2009 reduction is adopted, the total amount of halibut available for harvest by commercial longline fishermen in Area 2C for the 2009 season will be 4.47 million pounds—42 percent of the 10.63 million pounds that was available in 2006, and less than half the average catch limit for the decade 1997-2006.<sup>qqqqq</sup>

<sup>00000</sup> Effort does not necessarily equate with catch: in times of particularly good fishing, it may not take much effort to catch a lot of fish. Likewise, if there are no fish to be caught, no amount of effort can catch them.

<sup>ppppp</sup> Lending institutions might be more inclined to make loans to fishermen in possession of Glacier Bay LAPs than those without.

<sup>qqqqq</sup> The average halibut catch limit in Area 2C for the years 1997 through 2006 was 9.723 million pounds. The range during those years was 8.40 million pounds (2000) to 10.93 million pounds (2005).



The IPHC anticipates that halibut stocks will begin rebounding in about five years.<sup>1019</sup>

Salmon troll fishermen and Tanner crab fishermen do not have the same opportunity to increase their catch. There is a legal limit on the number of lines a salmon troller can operate. Short seasons and a limit on the number of pots a Tanner crab fisherman can fish preclude major increases in this fishery. More LAP holders may decide to fish in Glacier Bay, and some may upgrade their equipment, or fish more often or harder, but the general trend for these fisheries will be for the effort to slowly diminish.

NPS managers anticipate that, given the age composition of LAP holders, there will be little commercial fishing in Glacier Bay past 2040. The youngest person holding an LAP is currently in his mid-20s, but most are probably in their 40s and 50s.<sup>1020</sup> One factor that may skew this prediction is the halibut IFQ system. A person with both halibut IFQs and a Glacier Bay LAP need not own a boat, or even raingear. He could make fairly standard arrangements to fish with another vessel owner, and simply show up at the proper time and place with his paperwork and perhaps a coffee cup and something to read. No need to even help with the fishing.

Old age and infirmity will be a small barrier to the determined. Witness Albert Parker, an early homesteader in Gustavus. Parker in 1981 was old and ridden with disease and living in Anacortes, Washington. He knew he did not have long to live, and his desire was to die doing what he liked best: fishing commercially for coho salmon. He returned to Gustavus to do so. Parker caught quite a few cohos in the month or so he spent fishing and managed to survive the venture. His desire illustrates how important commercial fishing is to some. Perhaps there will be someone like Parker in Glacier Bay's future, someone determined to prolong—perhaps as a matter of principle—commercial fishing in Glacier Bay well beyond what actuarial tables might predict.

### Conclusion and Final Thoughts

*I've thought a lot about the commercial fishing issue and my role in it. While ultimately grateful to see Senator Stevens bring the issue to closure, the great disappointment was in not finding a negotiated solution that people and organizations, the*

*state and NPS, could work together to support and implement. That could have been so much better in so many ways. It was likely too much to expect. The parties had gone as far as they apparently were willing and the distance between positions was aptly described by Bill Brown as "the abyss." It didn't end the way many of us had expected, but perhaps it ended the only way it could – in Congress and the courts.—*  
Randy King, March 14, 2007.

After essentially ignoring commercial fishing for a half century, the NPS in the 1980s began an effort to establish Glacier Bay as a marine reserve and a more "pure" national park through the elimination of commercial fishing. Because of bureaucratic priorities, State of Alaska and public opposition, and political considerations, the initial effort was slow and timid.

That changed in 1988, when Marvin Jensen became superintendent. Jensen thought commercial fishing inappropriate in a national park, and in 1990 he began a serious attempt to terminate it under his agency's authority. His park-level effort soon garnered the support of the NPS and DOI hierarchy. The effort aroused tremendous controversy in Southeast Alaska. Resolutions were passed by communities and interest groups concerned over the potential loss of access to Glacier Bay's fishery resources. Alaska's Congressional delegation made several futile legislative attempts to settle the issue in a manner favorable to commercial fishing interests. Those of Senator Murkowski, in particular, were generally more ideological than practical and stood little chance of becoming law.

A long series of often confrontational and always frustrating stakeholder meetings were held that sought but never found consensus. Eight years and two Glacier Bay superintendents later, the NPS was well along in the process of achieving its goal. In the process that "resolved" the Glacier Bay commercial fishing issue, the stakeholders meetings unwittingly served an important purpose: they bought time while the relevant political and budgetary stars aligned.

At the time the Glacier Bay issue came to a head, Senator Stevens, through his seniority and political prowess and the electoral success of the Republican Party, was reaching what was

probably the pinnacle of his career in Congress. The federal budget was in surplus. And the Clinton administration was in its last years and wanted the issue settled on its watch. Senator Stevens recognized the inevitable, that the NPS had the authority to terminate commercial fishing in Glacier Bay and was prepared to do so promptly. Stevens used his position to pass legislation that made the commercial fishing closures and restrictions more acceptable in Southeast Alaska through the appropriation of some \$31 million in buyout and compensation funds, and the guarantee that fishermen with qualifying histories in the halibut, troll salmon and Tanner crab fisheries would have lifetime access to Glacier Bay. Probably more important to fishermen in the long run, Stevens also negotiated a guarantee that Glacier Bay National Park's outer waters would remain open to commercial fishing. Though purists might disagree, however, the NPS clearly got most of what it had set its sights on—the elimination, albeit phased, of commercial fishing in Glacier Bay proper.

Glacier Bay proper is today, by the definition of the National Academy of Sciences, a *marine protected area* (MPA)—“a discrete geographic area that has been designated to enhance the conservation of marine and coastal resources and is managed by an integrated plan that includes MPA-wide restrictions on some activities such as oil and gas extraction and higher levels of protection on delimited zones, designated as fishery and ecological reserves within the MPA.” If one ignores sport and personal use fisheries, within the Glacier Bay MPA there are 165 square miles of *fishery reserves*, where commercial fishing is precluded. Within the fishery reserves are four areas of congressionally designated marine wilderness that total 68 square miles. Motorized vessels are prohibited in the wilderness areas during the summer visitor season. These areas likely receive little, if any, sport or personal use fishing, and very closely fit the definition of marine *ecological reserves*—zones that protect “all living marine resources through prohibitions on fishing and the removal or disturbance of any living or non-living marine resource, except as necessary for monitoring or research to evaluate reserve effectiveness.”<sup>1021</sup>

Overall, Alaska's marine-based conservation system pales in comparison to its land-

based conservation system, which encompasses many millions of acres. Some conservationists and scientists believe that Glacier Bay, in combination with the Alaska Maritime National Wildlife Refuge,<sup>RRRRR</sup> Copper River Delta State Critical Habitat Area, Kachemak Bay National Estuarine Research Reserve, and the Walrus Island State Game Sanctuary, should form the nucleus of an Alaska marine conservation system that eventually rivals the state's land-based system.<sup>1022</sup>

Interest in establishing marine protected areas (MPAs) in Alaska remains high, though a serious effort to address the issue was cut off when Frank Murkowski replaced Tony Knowles as Alaska's governor. Under Governor Knowles and at the urging of Alaska's Board of Fisheries, ADF&G Commissioner Frank Rue in November 2001 had appointed a task force to develop a strategy for creating an MPA program in Alaska.<sup>1023</sup> Rue did so, and the task force produced a 91-page report, “Marine Protected Areas in Alaska: Recommendations for a Public Process,” in July 2002. The report showed something of a shift of ADF&G values toward those of the NPS: the task force acknowledged the need for the “maintenance of pristine ecosystem structure and function,” which, as some have pointed out, is similar to the preservationist interpretation of the Park Service's mandate.<sup>1024</sup> Furthermore, unlike earlier ADF&G rhetoric, the task force refrained from blaming the NPS for the closures and restrictions on commercial fishing in Glacier Bay, saying they were “based on the public's desire to exclude commercial extractive activities from a National Park.”<sup>1025</sup> The activities of the MPA task force were suspended under Governor Murkowski.

The Glacier Bay Commercial Fishing Compensation Program may have established a precedent. The *MPA News*, an information service on the planning and management of marine protected areas that is associated with the University of Washington's School of Marine Affairs, wrote that the program at Glacier Bay was “somewhat of an anomaly” nationally, but reported that “some fishing organizations have called for similar measures elsewhere in US waters.”<sup>1026</sup> Prominent among those organizations was the Pacific Coast Federation of Fishermen's Associations (PCFFA), which bills

<sup>RRRRR</sup> The Alaska Maritime National Wildlife Refuge is spread along much of Alaska's coast and comprises some 4.9 million acres that includes, in the words of the U.S. Fish and Wildlife Service, “more than 2,500 islands, islets, spires, rocks, reefs, waters and headlands.”

itself as “by far the largest and most politically active trade association of commercial fishermen on the [U.S.] west coast (sic).”<sup>1027</sup> In its position statement on marine protected areas, the PCFFA stated that “Where significant reduction in fisheries is an unavoidable consequence of establishment of an MPA ... funding for the compensation of fishermen in proportion with the reduction of the fishery shall be part of the establishment of the MPA.”<sup>1028</sup>

The two-phase legislative approach utilized at Glacier Bay—which may have politically been the only way for Senator Stevens and the administration to have addressed the issue—may have made it less economically efficient than it might have been. Had the legislation been done at one time, it would have been fair for fishermen in the three applicable fisheries to have been given a choice between receiving LAPs or compensation.

In one fishery there was really no choice. The king crab fishery was terminated in Glacier Bay, and in this fishery qualifying fishermen were compensated at the same rate as fishermen in the fisheries that also received LAPs. Additionally, in granting compensation fishermen’s ages could have been given consideration. Theoretically, older fishermen were able to document more landings and thus be eligible for more compensation than younger fishermen. Though they would not have as many landings to document and would thus receive less compensation than their older colleagues, younger fishermen would generally be expected to experience greater future losses. Even more fair, perhaps, would have been to include a compensation program in the Alaska National Interest Lands Conservation Act (ANILCA) in 1980. That legislation designated 41,367 acres of marine waters of Glacier Bay, including the Beardslee Islands, as wilderness that was to be managed in accord with the 1964 Wilderness Act, which precluded commercial activity. The few commercial fishermen who utilized Glacier Bay’s wilderness waters could have been fairly compensated and the issue settled, but perhaps this would have complicated the legislation beyond what was acceptable.

Bruce Babbitt was Secretary of the Interior for the most controversial years of the Glacier Bay issue. His comments in 2006 may provide a glimpse of how he viewed the process by which the Glacier Bay commercial fishing issue was resolved.

On June 15, 2006, President George W. Bush signed a proclamation that established the 140,000 square mile Northwestern Hawaiian Islands Marine National Monument. Under President Bill Clinton, Secretary of the Interior Bruce Babbitt had begun work on creating the monument in 1999, the same year the commercial fishing issue in Glacier Bay was resolved. The day the monument was proclaimed, Babbitt was interviewed on National Public Radio. His interviewer remarked that one provision of the agreement that facilitated the creation of the monument was that the small number of fishermen who would be displaced were to be compensated. Babbitt responded that this “Seems to be the American way ...gather a consensus in which everybody gets their piece ... call it extortion or compensation, as you will.”<sup>1029</sup> One has to wonder if his experience at Glacier Bay was on his mind.

There were four individuals who were key in resolving the commercial fishing issue in Glacier Bay. The first, and perhaps the most important, was park superintendent Marvin Jensen. It was his formal effort to phase out commercial fishing in 1991 that initiated the conflict over and, ultimately, the resolution of the issue. It could not have been so had the NPS not afforded him a great deal of autonomy. Commercial fisherman Tom Traibush was key because he helped steer the process by forcing Congress and the NPS to recognize the value of the Bay’s fisheries to himself and to the local community. Assistant Secretary of the Interior George Frampton figured prominently because he maintained the DOI effort to resolve the issue. Lastly, former Senator Ted Stevens, Alaska’s pre-eminent “go-to guy,” was important because he used his considerable power in Congress to make it all happen.

If one ignores the impacts of sport and personal use fishing, Glacier Bay is today well on its way to becoming one of the world’s premier marine reserves. To scientists it will become a valuable laboratory in which to study a largely undisturbed marine ecosystem. As well, it will provide something valuable to everyone concerned about the state of the world’s oceans: peace of mind in knowing that this substantial and productive body of water is largely protected.

This came at a cost that included \$31 million in buyout and compensation funds. But

unlike a sustainably-managed population of fish that can provide income in perpetuity, when the buyout and compensation money is gone, it is gone forever. And with it, future generations of Alaskans will not have the opportunity—at least in the commercial fishing industry—that was enjoyed by those of us who participated in Glacier Bay's fisheries.

Were the more than \$31 million price tag and the social and economic dislocations worth it? As was the case in the multitude of stakeholder meetings that sought to reach consensus on restrictions on commercial fishing in Glacier Bay, some would reply yes, that the Bay has finally been accorded the protective status it was due. Others would reply no, and maintain that commercial fishing had no significant impact on Glacier Bay's resources. And, if history is any judge, they will never, ever agree.

## Endnotes

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- <sup>4</sup> Rob Bosworth, “Glacier Bay: More than Just a Pretty Place to Alaskans,” *Seattle Times*, May 31, 1998.
- <sup>5</sup> C.R. S12792, October 21, 1998.
- <sup>6</sup> Glacier Bay official map and guide, NPS, 2007; William Eichenlob (NPS resource manager, Glacier Bay), personal communication with author, September 5, 2007; Chad Soiseth (NPS resource manager, Glacier Bay), personal communication with author, September 5, 2007.
- <sup>7</sup> Jefferson F. Moser, *The Salmon and Salmon Fisheries of Alaska: Report of the Operations of the United States Fish Commission Steamer Albatross for the Year Ending June 30, 1898*, in *Bulletin of the United States Fish Commission*, Vol. XVIII, 1898, 55<sup>th</sup> Cong. 3d. sess. Ho. Doc. No. 308 (Washington: GPO, 1899), 43.
- <sup>8</sup> J. W. Collins, “The Fishing Vessels and Boats of the Pacific Coast,” *Bulletin of the United States Fish Commission*, Vol. X, 52d Cong. 1<sup>st</sup> sess, H. Misc. Doc. No. 341, 21-22.) should be 1891
- <sup>9</sup> Kate Field, “A Trip to Southeastern Alaska,” *Harper’s Weekly* (September 8, 1888): 681-684.
- <sup>10</sup> Tarleton H. Bean, Curator of the Department of Fishes in the United States National Museum, *Catalogue of the Collections of Fishes Exhibited by the United States National Museum, Great International Fisheries Exhibition, London, 1883* (Washington: GPO, 1883), 398.
- <sup>11</sup> Jefferson F. Moser, *Salmon Investigations of the Steamer Albatross in the Summer of 1901*, in *Bulletin of the United States Fish Commission*, Vol. XXI, 1901, 57<sup>th</sup> Cong. 1<sup>st</sup> sess., Ho. Doc. No. 706 (Washington: GPO, 1902), 374-376.
- <sup>12</sup> Jefferson F. Moser, *The Salmon and Salmon Fisheries of Alaska: Report of the Operations of the United States Fish Commission Steamer Albatross for the Year Ending June 30, 1898*, in *Bulletin of the United States Fish Commission*, Vol. XVIII, 1898, 55<sup>th</sup> Cong. 3d. sess. Ho. Doc. No. 308 (Washington: GPO, 1899), 124.
- <sup>13</sup> This if from Niblack (1890: 276-278), reprinted in Walter R. Goldschmidt and Theodore H. Haas, *Haa Aani, Our Land: Tlingit and Haida Land Rights and Use* (Seattle: University of Washington Press and Sealaska Heritage Foundation (Juneau), 1998), 19.
- <sup>14</sup> “Our Heritage,” a booklet of the United States Indian School, Ketchikan, AK, 1940?, 30; Ivan Petroff, *Report on the Population, Industries, and Resources of Alaska* in 47<sup>th</sup> Cong., 2d sess., Ho. Misc. Doc. No. 42, Pt. 8 (Washington: GPO, 1884), 69; Greg Streveler, personal communication with author, Gustavus, Alaska, January 3, 2007.
- <sup>15</sup> “Our Heritage,” a booklet of the United States Indian School, Ketchikan, AK, 1940?, 39.
- <sup>16</sup> Jefferson F. Moser, *The Salmon and Salmon Fisheries of Alaska: Report of the Operations of the United States Fish Commission Steamer Albatross for the Year Ending June 30, 1898*, in *Bulletin of the United States Fish Commission*, Vol. XVIII, 1898, 55<sup>th</sup> Cong. 3d. sess. Ho. Doc. No. 308 (Washington: GPO, 1899), 43.
- <sup>17</sup> George R. Tingle (inspector of salmon fisheries), *Report of the Salmon Fisheries in Alaska, 1896*, Treasury Department Doc. No. 1925 (Washington: GPO, 1897): 11, 24.
- <sup>18</sup> Tarleton H. Bean, Curator of the Department of Fishes in the United States National Museum, *Catalogue of the Collections of Fishes Exhibited by the United States National Museum, Great International Fisheries Exhibition, London, 1883* (Washington: GPO, 1883), 395.
- <sup>19</sup> Alaska Department of Fish and Game, *Sockeye Salmon* (Wildlife Notebook Series), 1994.
- <sup>20</sup> Donald J. Orth, *Dictionary of Alaska Place Names*, Geological Survey Professional Paper 567 (Washington: GPO, 1967, reprinted 1971 with minor revisions), 108.
- <sup>21</sup> U.S. Coast and Geodetic Survey, *Pacific Coast Pilot: Alaska*, Part I (Washington: GPO, 1883).
- <sup>22</sup> E. Lester Jones, *Report of Alaska Investigations in 1914*, Bureau of Fisheries (Department of Commerce), (Washington: GPO, 1915), 37.
- <sup>23</sup> E. Ruhamah Scidmore, *Alaska: Its Southern Coast and the Sitkan Archipelago* (Boston: D. Lothrop Co., 1885), 125.
- <sup>24</sup> August Buschmann to Francis H. Jacot, Supervisory Park Ranger, Glacier Bay National Monument, June 28, 1960, NPS files, Bartlett Cove, AK.

- <sup>25</sup> Jefferson F. Moser, *Salmon Investigations of the Steamer Albatross in the Summer of 1901*, in *Bulletin of the United States Fish Commission*, Vol. XXI, 1901, 57<sup>th</sup> Cong. 1<sup>st</sup> sess., Ho. Doc. No. 706 (Washington: GPO, 1902), 374-376.
- <sup>26</sup> Howard M. Kutchin, *Report on the Salmon Fisheries of Alaska, 1900*, Senate. Doc. No. 168, 56<sup>th</sup> Cong. 2d. sess. (Washington: GPO, 1901, 16-17)
- <sup>27</sup> Marshall McDonald, *Report on the Salmon Fisheries of Alaska* (extracts), Appendix No. 1 in Joseph Murray, *Salmon Fisheries in Alaska, 1894* (Washington: GPO, 1896), 23.
- <sup>28</sup> Jefferson F. Moser, *Salmon Investigations of the Steamer Albatross in the Summer of 1901*, in *Bulletin of the United States Fish Commission*, Vol. XXI, 1901, 57<sup>th</sup> Cong. 1<sup>st</sup> sess., Ho. Doc. No. 706 (Washington: GPO, 1902): 374-376.
- <sup>29</sup> George A. Rounsefell and George B. Kelez, "The Salmon and Salmon Fisheries of Swiftsure Bank, Puget Sound, and the Fraser River" *Bulletin of the Bureau of Fisheries*, Vol. XLIX, Bull. No. 27 (Washington, DC: GPO, 1938), 725.
- <sup>30</sup> Tarleton H. Bean, *Catalogue of the Collections of Fishes Exhibited by the United States National Museum*, Great International Fisheries Exhibition, London, 1883 (Washington: GPO, 1883), 398.
- <sup>31</sup> George R. Tingle (inspector of salmon fisheries), *Report of the Salmon Fisheries in Alaska, 1896*, Treasury Department Doc. No. 1925 (Washington: GPO, 1897): 20.
- <sup>32</sup> Tarleton H. Bean, *Salmon and Salmon Rivers of Alaska*, 51<sup>st</sup> Cong., 1<sup>st</sup> sess., H. Mis. Doc. No. 211 (Washington, DC: GPO, 1890), 43-44.
- <sup>33</sup> Kate Field, "A Trip to Southeastern Alaska," *Harper's Weekly* (September 8, 1888): 681-684.
- <sup>34</sup> John N. Cobb, "Report on the Fisheries of Alaska," in *The Fisheries of Alaska in 1906*, Bureau of Fisheries Doc. No. 618 (Washington: GPO, 1907), 21.
- <sup>35</sup> Marshall McDonald, *Report of the Commissioner of Fish and Fisheries Relative to the Salmon Fisheries of Alaska*, 52<sup>nd</sup> Cong., 1<sup>st</sup> sess., Sen. Misc. Doc. No. 192 (Washington: GPO, 1892), 4.
- <sup>36</sup> Francis H. Jacot, Acting Supervisory Park Ranger, to Superintendent Sitka and Glacier Bay, June 10, 1959, NPS files, Bartlett Cove, AK.
- <sup>37</sup> August Buschmann to Francis H. Jacot, Supervisory Park Ranger, Glacier Bay N.M., June 28, 1960, NPS files, Bartlett Cove, AK.
- <sup>38</sup> Tarleton H. Bean, *Salmon and Salmon Rivers of Alaska*, 51<sup>st</sup> Cong., 1<sup>st</sup> sess., Ho. Mis. Doc. No. 211 (Washington, DC: GPO, 1890), 40.
- <sup>39</sup> *Bulletin of the U.S. Fish Commission*, Vol. XVIII, 1898, 55<sup>th</sup> Cong., 3d sess., Ho. Doc. No. 308 (Washington: GPO, 1899), 125.
- <sup>40</sup> Kate Field, "A Trip to Southeastern Alaska," *Harper's Weekly* (September 8, 1888): 681-684.
- <sup>41</sup> Jefferson F. Moser, "The Salmon and Salmon Fisheries of Alaska: Report of the Operations of the United States Fish Commission Steamer Albatross for the Year Ending June 30, 1898," in *Bulletin of the United States Fish Commission*, Vol. XVIII, 1898, 55<sup>th</sup> Cong. 3d. sess. Ho. Doc. No. 308 (Washington: GPO, 1899), 31.
- <sup>42</sup> (*Sitka Alaskan*, December 27, 1890.
- <sup>43</sup> (*Sitka Alaskan*, February 21, 1891.
- <sup>44</sup> Jefferson F. Moser, "Salmon Investigations of the Steamer Albatross in the Summer of 1900," *Bulletin of the U.S. Fish Commission*, Vol. XXI, 1901, 57<sup>th</sup> Cong. 1<sup>st</sup> sess., Ho. Doc. No. 706 (Washington: GPO, 1902), table; 1949 Annual Report of Alaska Fisheries Board and Alaska Dept. of Fisheries (Report No. 1), 31.
- <sup>45</sup> James A. Crutchfield and Giulio Pontecorvo, *The Pacific Salmon Fisheries: A Study of Irrational Conservation* (Baltimore: Johns Hopkins Press, 1969), 74-75.
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- <sup>47</sup> *Bulletin of the U.S. Fish Commission*, Vol. XVIII, 1898, 55<sup>th</sup> Cong., 3d sess., Ho. Doc. No. 308 (Washington: GPO, 1899), 125.
- <sup>48</sup> Homer E. Gregory and Kathleen Barnes, *North Pacific Fisheries, with Special Reference to Alaska Salmon* (New York: American Council, Institute of Pacific Relations, 1939), 97.
- <sup>49</sup> "Activities of Peter Thams Buschmann and Sons (in brief) since their arrival in the United States early in June 1891, as related by August Buschmann in January, 1963," Bob Thorstenson

papers, Seattle WA; August Buschmann to David O. Hamlin, June 15, 1960 Bartlett Cove, AK; Howard M. Kutchin, *Report on the Salmon Fisheries of Alaska, 1900*, Senate. Doc. No. 168, 56<sup>th</sup> Cong. 2d. sess. (Washington: GPO, 1901), 35.

<sup>50</sup> Howard M. Kutchin, *Report on the Salmon Fisheries of Alaska, 1900*, Senate. Doc. No. 168, 56<sup>th</sup> Cong. 2d. sess. (Washington: GPO, 1901), 75; August Buschmann to Francis H. Jacot, Supervisory Park Ranger, Glacier Bay National Monument, June 28, 1960, NPS files, Bartlett Cove, AK; Jefferson F. Moser, "Salmon Investigations of the Steamer Albatross in the Summer of 1900," *Bulletin of the U.S. Fish Commission, 1901*, Vol. XXI (Washington: GPO, 1902), 376; Reference to vessel *White Wings* in Jefferson F. Moser, *Alaska Salmon Investigations in 1900*, in *Bulletin of the United States Fish Commission, 1901*, Vol. XXI (Washington: GPO, 1902), 309.

<sup>51</sup> August Buschmann to R. N. DeArmond, December 2, 1959, Bob Thorstenson papers, Seattle, WA.

<sup>52</sup> George R. Tingle (inspector of salmon fisheries), *Report of the Salmon Fisheries in Alaska, 1896*, Treasury Department Doc. No. 1925 (Washington: GPO, 1897): 17; Jefferson F. Moser, "Salmon Investigations of the Steamer Albatross in the Summer of 1900," *Bulletin of the U.S. Fish Commission*, Vol. XXI, 1901 (Washington: GPO, 1902), 186-187.

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# Appendices

## Appendix A: Commercial Fishing Timeline in Glacier Bay National Monument/Park

**1925** Glacier Bay National Monument established. Commercial fishing is taking place

**1939** Glacier Bay National Monument enlarged. Commercial fishing continues.

**1966** NPS revised its fishing regulations to prohibit commercial fishing activities in Glacier Bay and other units. The 1966 regulations did not contain specific authorization for commercial fishing in Glacier Bay National Monument.

**1978** The 1978 NPS "Management Policies" reiterated that "commercial fishing is permitted only where authorized by law."

**1980** The Alaska National Interest Lands Conservation Act re-designated Glacier Bay National Monument to Glacier Bay National Park and Preserve, enlarged the unit, and designated wilderness that included marine waters. 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 any area in Glacier Bay National Park.

**1983** The 1983 revision of the NPS general regulations included a prohibition on commercial fishing throughout marine and fresh waters, unless specifically authorized by law.

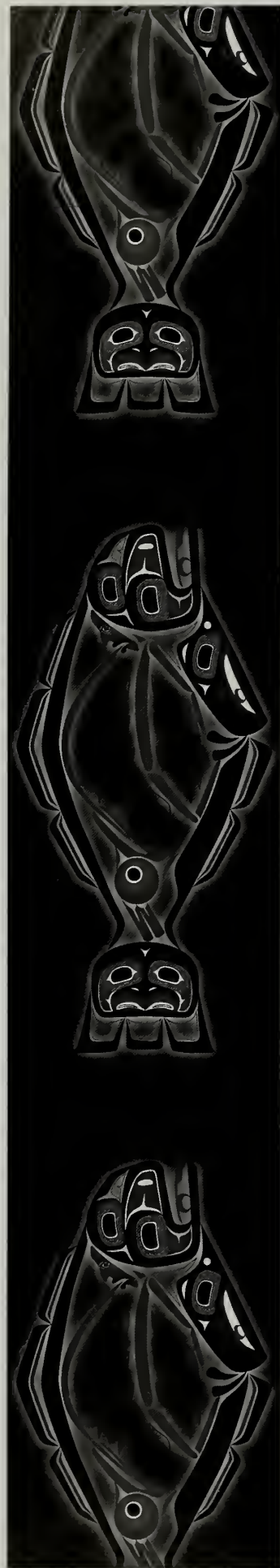
**1980-85** Certain NPS documents suggest some commercial fishing would continue in Glacier Bay. For example, the 1980 and 1985 whale protection regulations acknowledged commercial fishing in Glacier Bay proper. Also, the park's 1984 General Management Plan stated: "Traditional commercial fishing practices will continue to be allowed throughout most park and preserve waters. However, no new (nontraditional) fishery will be allowed by the NPS. 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." Commercial fishing continued in wilderness waters. Also, the 1988 EIS concerning wilderness recommendations for the park referred to the continuation of commercial fishing in non-wilderness park waters.

**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.).

**1991** NPS published a proposed rule on August 5, 1991 (56 FR 37262). The proposed rule would have (a) clarified the prohibition on commercial fishing in designated wilderness waters, and (b) exempted commercial fishing in other park waters from the nationwide regulatory prohibition for a "phase out" period of seven years. At the State of Alaska's request, 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.

**1994** The U.S. Federal 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." An appeal to the Ninth Circuit Court of Appeals Alaska Wildlife Alliance v. Brady, Nos. 95-25151 and 95-35188 (9th Cir.) resulted in a 1997 affirmation of the district court decision.

**1996** The NPS published a final rule concerning vessel management in the park in May of 1996. These regulations established motorless waters for portions of wilderness waters in Glacier Bay proper from May 1 - September 15. This vessel closure included the Beardslee Islands where the majority of Dungeness crab fishing occurs within the Bay.



**1995-97** After discussions between the NPS and State of Alaska, jointly sponsored meetings with commercial fishermen, environmental groups and other interested parties were held during December 1995 and March and May 1996 in an attempt to resolve the commercial fishing issue in Glacier Bay. The process was halted because of concerns related to the Federal Advisory Committee Act.

**1997** In Fall 1997, the NPS began sponsoring public workshops in Juneau to exchange information, increase awareness of the issues and explore management options for commercial fishing within the park. These workshops were conducted in association with the State of Alaska. Key interest groups and stakeholders participated.

**1998** An environmental assessment was published and available for comment early April of 1998. This document describes environmental and socio-economic effects of the proposed rule and four alternatives under consideration for managing commercial fishing in the park. Public hearings and open houses were held in southeast Alaska and Seattle in May. The public comment deadline was extended to November 15 to accommodate requests made by the State of Alaska, the Alaskan delegation and commercial fishermen.

**1998** The Appropriations Act of 1999 (P.L. 105-277, Section 123), outlined new statutory requirements to address the problem of commercial fishing in Glacier Bay National Park. The Act provides direction to:

- Extend the comment period of the Proposed Rule and Environmental Assessment to January 15, 1999.
- The NPS and the State of Alaska to develop a cooperative management plan to regulate commercial fishing within the park.
- Continue fishing in the marine waters of Glacier Bay National Park outside Glacier Bay proper.
- Limit within Glacier Bay proper, commercial fishing to qualifying fishermen and only for their lifetime.
- Close designated marine wilderness areas to commercial fishing.
- Provide compensation for qualifying Dungeness crab commercial fishermen displaced by the closure of the Beardslee Islands and Dundas Bay.

**1999** On May 21, 1999, the Act was amended by Congress under Section 501 of the 1999 Emergency Supplemental Appropriations Act (Pub. L.106-31). Section 501 modified the Dungeness crab compensation program by changing the eligibility period and compensation formulas, and by extending the application deadline for this program until August 1, 1999. Section 501 also appropriated \$23 million dollars for a new compensation program intended for fishermen, crewmembers, processors, communities and others adversely affected by restrictions of commercial fishing activities within Glacier Bay proper. The May amendments also required the Secretary of the Interior to publish an interim final rule, accept public comment and to publish a final rule implementing the requirements of Section 123 no later than September 30, 1999. Section 501 also delayed implementation of the non-wilderness closures for on-going halibut and salmon fisheries during 1999.

**1999** The Final Rule regarding Glacier Bay National Park commercial fishing regulations was published in the Federal Register on October 20, 1999. This established special regulations for commercial fishing in the marine waters of the park; closed specifically identified areas of non-wilderness waters in Glacier Bay proper and all wilderness waters within Glacier Bay National Park to commercial fishing; limited commercial fishing in Glacier Bay proper to three specific commercial fisheries; established a “grandfathering” process to allow qualifying fisherman in the three authorized commercial fisheries to continue fishing in the remaining waters of Glacier Bay

proper under nontransferable lifetime permits; and clarified that the marine waters of the park outside of Glacier Bay proper will remain open to existing fisheries.

**2000** The State and commercial fishermen requested that public meetings be delayed until early 2000 to accommodate 1999 commercial fishing seasons and seasonal schedules. Public meetings were held in communities throughout S.E. Alaska in January and February, 2000 for public comment to assist with development of the compensation plan and the development of the economic assessment (prepared by Juneau-based economic firm of McDowell Group). Additional public comment was solicited and received through open, public teleconferences by contracted facilitators with participation by the State (ADF&G) and park management until the draft compensation plan was completed.

**2000** In May 2000, a draft economic assessment (prepared by a Juneau-based economic research firm) was released for public comment. In August, the final economic assessment was published. Depending on the loss measurement method and discount rate, projected economic impacts ranged from \$23 million to \$59.4 million.

**2000** October, 2000 the draft compensation plan was published with a 180-day comment period. Fishermen and the State requested the extended comment period to accommodate the 2000/2001 commercial fishing seasons and seasonal schedules.

**2000** In November, 2000, a second round of public meetings was held in communities throughout S.E. Alaska for public comment on the draft compensation plan.

**2001** The compensation plan was published in the Federal Register; the application period for fishermen to seek a share of the \$23 million compensation fund closed January 28, 2002. The plan provided formulas for distributing available funding among qualified applicants.

**2002** Applications were received from 1027 individuals, businesses and communities. A total of 386 applications were initially denied (usually because applications were incomplete), and estimated compensation amounts were determined for the remaining applicants. All applicants were notified of these initial determinations and offered an opportunity to appeal. The eligibility determination and the amount of compensation could be appealed; however, the plan's formulas for distribution among eligible applicants were not subject to administrative appeal.

**2002** Appeals were filed by 367 individuals, businesses and communities, and 225 requested a hearing. In the fall of 2002, the DOI Office of Hearings and Appeals conducted in person (75) and telephonic hearings (150) and provided recommendations on all of the 367 appeals. Their recommendations were forwarded to the NPS Alaska Regional Director for a final administrative decision.

**2003** By early March, the Alaska Regional Office of the NPS had all the applications/appeals processed, had notified the applicants of the final decisions and sent final payout information packages to the Treasury Department for final compensation fund transfer by the end of March 2003.



112 STAT. 2681-259 PUBLIC LAW 105-277—OCT. 21, 1998

16 USC 410hh-4  
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SEC. 123. COMMERCIAL FISHING IN GLACIER BAY NATIONAL PARK. (a) GENERAL.—

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

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

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

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

(C) fish only with—

- (i) longline gear for halibut;
- (ii) pots or ring nets for tanner crab; or
- (iii) trolling gear for salmon.

(3) With respect to the individuals engaging in commercial fishing in Glacier Bay Proper pursuant to paragraph (2), no fishing shall be allowed in the West Arm of Glacier Bay Proper (West Arm) north of 58 degrees, 50 minutes north latitude,

except for trolling for king salmon during the period from October 1 through April 30. The waters of Johns Hopkins Inlet, Tarr Inlet and Reid Inlet shall remain closed to all commercial fishing.

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

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

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

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

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

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

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

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

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

(3) holds a current valid commercial fishing permit that allows such individual to engage in commercial fishing for Dungeness crab in Glacier Bay National Park,

shall be eligible to receive from the United States compensation that is the greater of (i) \$400,000, or (ii) an amount equal to the fair market value (as of the date of relinquishment) of the commercial fishing permit for Dungeness crab, of any Dungeness crab pots or other Dungeness crab gear, and of not more than one Dungeness crab fishing vessel, together with an amount equal to the present value of the foregone net income from commercial fishing for Dungeness crab for the period January 1, 1999, through December 31, 2004, based on the individual's net earnings from the Dungeness crab fishery during the period January 1, 1991, through December 31, 1996. Any individual seeking such compensation shall provide the consent necessary for the Secretary of the

Interior to verify such net earnings in the fishery. The Secretary of the Interior's determination of the amount to be paid shall be completed and payment shall be made within six months from the date of application by the individuals described in this subsection and shall constitute final agency action subject to review pursuant to the Administrative Procedures Act in the United States District Court for the District of Alaska.

(c) DEFINITION AND SAVINGS CLAUSE.—

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

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

SEC. 124. Notwithstanding any other provision of law, grazing permits which expire during fiscal year 1999 shall be renewed for the balance of fiscal year 1999 on the same terms and conditions as contained in the expiring permits, or until the Bureau of Land Management completes processing these permits in compliance with all applicable laws, whichever comes first. Upon completion of processing by the Bureau, the terms and conditions of existing grazing permits may be modified, if necessary, and reissued for a term not to exceed ten years. Nothing in this language shall be deemed to affect the Bureau's authority to otherwise modify or terminate grazing permits.

SEC. 125. CONVEYANCE TO THE TOWN OF PAHRUMP, NEVADA.

The Secretary of the Interior, acting through the Bureau of Land Management, shall convey to the Town of Pahrump, Nevada, all title, title, and interest in the public lands within the boundary of the public lands described in section 124 of the Nevada Desert Conservation Alternatives Act and the boundary of the public lands described in section 124 of the Nevada Desert Conservation Alternatives Act.

The Secretary shall also convey to the Town of Pahrump, Nevada, all title, title, and interest in the public lands within the boundary of the public lands described in section 124 of the Nevada Desert Conservation Alternatives Act and the boundary of the public lands described in section 124 of the Nevada Desert Conservation Alternatives Act.

The Secretary shall also convey to the Town of Pahrump, Nevada, all title, title, and interest in the public lands within the boundary of the public lands described in section 124 of the Nevada Desert Conservation Alternatives Act and the boundary of the public lands described in section 124 of the Nevada Desert Conservation Alternatives Act.

Nothing in this section shall be construed to affect any provision of law, none of which shall be amended or repealed by any other Act hereafter enacted, relating to the Secretary of the Interior, except with respect to the conveyance and management of public lands. The preparation of maps and reports for the Nevada Desert Conservation Alternatives Act, or any other Act, shall not be construed to affect any provision of law, none of which shall be amended or repealed by any other Act hereafter enacted, relating to the Secretary of the Interior, except with respect to the conveyance and management of public lands. Below purchasing all public lands in the State of Nevada, the Secretary shall purchase all public lands in the State of Alaska.

113 STAT. 72

PUBLIC LAW 106-31—MAY 21, 1999

## OTHER RELATED AGENCY

Department of the Interior and Related Agencies Appropriations Act, 1999

## HIGHLIGHTS OF THE ACT

The Department of the Interior and Related Agencies Appropriations Act, 1999 (Public Law 105-277) is amended by the Department of the Interior and Related Agencies Appropriations Act, 1999 (section 101(e) of division A of Public Law 105-277) to provide for the following:

The Department of the Interior and Related Agencies Appropriations Act, 1999 (section 101(e) of division A of Public Law 105-277) is amended by the Department of the Interior and Related Agencies Appropriations Act, 1999 (section 101(e) of division A of Public Law 105-277) to provide for the following:

Section 123(b) of the Department of the Interior and Related Agencies Appropriations Act, 1999 (section 101(e) of division A of Public Law 105-277) is amended—

(1) in paragraph (1)—

(A) by striking “February 1, 1999” and inserting “August 1, 1999”; and

(B) by striking “1996” and inserting “1998”; and

(2)(A) by striking “of any Dungeness crab pots or other Dungeness crab gear, and of not more than one Dungeness crab fishing vessel,”; and

(B) by striking “the period January 1, 1999, through December 31, 2004, based on the individual’s net earnings from the Dungeness crab fishery during the period January 1, 1991, through December 31, 1996.” and inserting “for the period beginning January 1, 1999 that is equivalent in length to the period established by such individual under paragraph (1), based on the individual’s net earnings from the Dungeness crab fishery during such established period. In addition, such individual shall be eligible to receive from the United States fair market value for any Dungeness crab pots, related gear, and not more than one Dungeness crab fishing vessel if such individual chooses to relinquish to the United States such pots, related gear, or vessel.”.

(b) OTHERS AFFECTED BY FISHERY CLOSURES AND RESTRICTIONS.—Section 123 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (section 101(e) of division A of Public Law 105-277), as amended, is amended further by redesignating subsection (c) as subsection (d) and inserting immediately after subsection (b) the following new subsection:

“(c) OTHERS AFFECTED BY FISHERY CLOSURES AND RESTRICTIONS.—The Secretary of the Interior is authorized to provide \$23,000,000 for a program developed with the concurrence of the State of Alaska to fairly compensate United States fish processors, fishing vessel crew members, communities, and others negatively affected by restrictions on fishing in Glacier Bay National Park. For the purpose of receiving compensation under the program

## GENERAL PROVISION, THIS CHAPTER

Alaska.

16 USC 410hh-4  
note.

SEC. 501. GLACIER BAY. (a) DUNGENESS CRAB FISHERMEN.—Section 123(b) of the Department of the Interior and Related Agencies Appropriations Act, 1999 (section 101(e) of division A of Public Law 105-277) is amended—

(1) in paragraph (1)—

(A) by striking “February 1, 1999” and inserting “August 1, 1999”; and

(B) by striking “1996” and inserting “1998”; and

(2)(A) by striking “of any Dungeness crab pots or other Dungeness crab gear, and of not more than one Dungeness crab fishing vessel,”; and

(B) by striking “the period January 1, 1999, through December 31, 2004, based on the individual’s net earnings from the Dungeness crab fishery during the period January 1, 1991, through December 31, 1996.” and inserting “for the period beginning January 1, 1999 that is equivalent in length to the period established by such individual under paragraph (1), based on the individual’s net earnings from the Dungeness crab fishery during such established period. In addition, such individual shall be eligible to receive from the United States fair market value for any Dungeness crab pots, related gear, and not more than one Dungeness crab fishing vessel if such individual chooses to relinquish to the United States such pots, related gear, or vessel.”.

(b) OTHERS AFFECTED BY FISHERY CLOSURES AND RESTRICTIONS.—Section 123 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (section 101(e) of division A of Public Law 105-277), as amended, is amended further by redesignating subsection (c) as subsection (d) and inserting immediately after subsection (b) the following new subsection:

“(c) OTHERS AFFECTED BY FISHERY CLOSURES AND RESTRICTIONS.—The Secretary of the Interior is authorized to provide \$23,000,000 for a program developed with the concurrence of the State of Alaska to fairly compensate United States fish processors, fishing vessel crew members, communities, and others negatively affected by restrictions on fishing in Glacier Bay National Park. For the purpose of receiving compensation under the program

required by this subsection, a potential recipient shall provide a sworn and notarized affidavit to establish the extent of such negative effect.”

(c) IMPLEMENTATION.—Section 123 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (section 101(e) of division A of Public Law 105-277), as amended, is amended further by inserting at the end the following new subsection:

“(e) IMPLEMENTATION AND EFFECTIVE DATE.—The Secretary of the Interior shall publish an interim final rule for the Federal implementation of paragraphs (2) through (5) of subsection (a) and shall provide an opportunity for public comment of no less than 45 days on such interim final rule. The final rule for the Federal implementation of paragraphs (2) through (5) of subsection (a) shall be published in the Federal Register no later than September 30, 1999 and shall take effect on September 30, 1999, except that the limitations in paragraphs (3) through (5) of such subsection shall not apply with respect to halibut fishing until November 15, 1999 or salmon troll fishing until December 31, 1999. In the event that any individual eligible for compensation under subsection (b) has not received full compensation by June 15, 1999, the Secretary shall provide partial compensation on such date to such individual and shall expeditiously provide full compensation thereafter.”

(d) For the purposes of making the payments authorized in section 123 of the Department of the Interior and Related Agencies Appropriations Act, 1999, as amended by this section, an additional \$26,000,000 is hereby appropriated to “Departmental Management, Department of the Interior”, to remain available until expended, of which \$3,000,000 shall be an additional amount for compensation authorized by section 123(b) of such Act, as amended, and of which \$23,000,000 shall be for compensation authorized by section 123(c) of such Act, as amended. The entire amount made available in this subsection is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (2 U.S.C. 901(b)(2)(A)), and shall be available only if the President transmits to the Congress an official budget request that includes designation of the entire amount as an emergency requirement as defined in such Act.

16 USC 410hh-4  
note.

Publication.

Federal Register,  
publication.

of Glacier Bay proper under nontransferable lifetime permits; and, clarifying that the marine waters of Glacier Bay National Park outside of Glacier Bay proper will remain open to various existing commercial fisheries. Section 123 also directs that authorized commercial fisheries be managed in accordance with a cooperatively developed state/federal fisheries management plan. The cooperative state/federal fisheries management plan is being developed independent of this rule and will be announced at a later date.

**DATES:** This rule is effective on October 20, 1999, with the exception of paragraphs (a)(10)(i)–(iii) which take effect on January 1, 2000.

**ADDRESSES:** Tomie Lee, Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826. E-mail address is *glba-administration@nps.gov*.

**FOR FURTHER INFORMATION CONTACT:** Tomie Lee, Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska, 99827, Phone (907) 697-2230; fax (907) 697-2654.

**SUPPLEMENTARY INFORMATION:**

**Background**

The background section in the re-proposed rule of August 2, 1999 (64 FR 41854), includes a comprehensive chronology of Glacier Bay's commercial fishing history that outlines the circumstances and events leading to this final rule. That information is unchanged and has continuing applicability. The National Park Service (NPS) wishes to note that numerous extensions to the public comment period on the 1997 proposed rule afforded the public a prior opportunity to comment on Section 123 (see *e.g.*, 63 FR 68655, December 11, 1998; 64 FR 1573, January 11, 1999). The re-proposed rule was published, in part, to fulfill the requirement of Section 123, as amended by Pub. L. 106-31 (May 21, 1999), which directed the Secretary of the Interior to re-publish the rule and provide an opportunity for the public to comment for not less than 45 days.

To comply with Section 123, the rule, in part, amends the general regulatory prohibition on commercial fishing activities in units of the National Park System, and authorizes various existing commercial fisheries to continue in most marine waters of Glacier Bay National Park subject to a cooperatively developed state/federal fisheries management plan.

The other provisions of the rule also conform to the requirements of Section 123. 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, recent, reoccurring history of participation in Glacier Bay proper fisheries to continue fishing in Glacier Bay proper for their lifetimes. The final rule adopts October 1, 2000, as the deadline to apply for a lifetime permit. Beginning October 1, 2000, a lifetime permit is needed in order to fish in Glacier Bay proper. To qualify, fishermen must be able to document that they have fished in Glacier Bay proper in one of the three authorized commercial fisheries as follows: For the halibut fishery, 2 years of participation are required in Glacier Bay proper during the 7-year period, 1992 through 1998. For the salmon and Tanner crab fisheries, 3 years of participation are required in Glacier Bay proper during the 10-year period, 1989 through 1998. The 7-year qualifying period for halibut is based, in large part, on the establishment of a statistical sub-area for Glacier Bay proper in 1992. Use of this qualifying period specific to this sub-area will assist fishermen in documenting, and NPS in identifying, a history of fishing within Glacier Bay proper. A 10-year qualifying period is used for the Tanner crab and salmon fisheries. These 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 lifetime access to an authorized fishery.

The rule also describes the application requirements and procedures for fishermen to follow to apply for a lifetime access permit for an authorized fishery in Glacier Bay proper. The rule requires that applicants demonstrate that they hold a valid state limited entry commercial fishing permit, and for halibut an International Pacific Halibut Commission quota share, for the fishery in Glacier Bay proper; provide a sworn and notarized affidavit attesting to their history and participation in the fishery within Glacier Bay proper; and, provide other documentation that corroborates their participation in the fishery in Glacier Bay proper during the qualifying years. The rule requires applicants to

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**36 CFR Part 13**

**RIN 1024-AB99**

**Glacier Bay National Park, AK;  
Commercial Fishing Regulations**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule represents a major step towards a comprehensive resolution of commercial fishing issues in Glacier Bay National Park. In accordance with the provisions of Section 123 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 (Section 123), as amended, the rule establishes special regulations for commercial fishing in the marine waters of Glacier Bay National Park. The rule implements provisions in Section 123 by: closing specifically identified areas of non-wilderness waters in Glacier Bay proper and all wilderness waters within Glacier Bay National Park to commercial fishing; limiting commercial fishing in Glacier Bay proper to three specific commercial fisheries; establishing a "grandfathering" process to allow qualifying fishermen in the three authorized commercial fisheries to continue fishing in the remaining waters

provide two types of corroborating documentation readily available from the State of Alaska: permit histories; and, landing reports. The permit history documents the length of time an applicant has been a permit holder in a fishery, and the landing report documents the time and location of the applicant's fishery landings. The application requirements for a lifetime commercial fishing access permit in Glacier Bay (*i.e.*, a copy of the valid permit(s) and quota share(s), affidavit, permit history and landing report) are less demanding than that typically required by the State of Alaska or National Marine Fisheries Service (for halibut) for similar limited entry programs. The rule encourages applicants to submit other forms of corroborating documentation—for example, vessel logbooks or affidavits from other fishermen or processors—to assist in the establishment of their history of participation in a particular fishery in Glacier Bay proper.

NPS recognizes 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 together catches from Glacier Bay proper and Icy Strait statistical areas, and report them as Icy Strait landings on their fish tickets. Moreover, no statistical reporting area exists for salmon that is specific to Glacier Bay proper. Because of this, for the salmon fishery, NPS will consider landing reports from District 114 (all of Icy Strait from Cross Sound to the Lynn Canal, including Glacier, Dundas and Taylor Bays and Excursion Inlet) as indirect evidence of participation in the fishery in Glacier Bay proper; this indirect evidence, however, must be supported by additional documentation that supports applicants' declaration of Glacier Bay proper salmon landings (such as affidavits from crewmembers, other fishermen, processors or logbooks or other corroborating documentation). Salmon fishermen who can document more than incidental use of District 114 should submit that documentation as it may bolster other evidence of their landings from the Glacier Bay proper fishery.

Both the halibut fishery (Regulatory Sub-area 184) and the Tanner crab fishery (Statistical areas 114–70 through 114–77) have reporting areas specific to Glacier Bay proper. Therefore, applicants who wish to rely on landing data from areas outside, but immediately adjacent to, Glacier Bay proper must submit convincing corroborating documentation (such as affidavits from crewmembers, other

fishermen, processors or log books) in addition to their personal affidavit that a portion of their catch was landed in Glacier Bay proper. Landing reports for halibut and Tanner crab must, at the very least, be from the reporting area immediately adjacent to Glacier Bay proper to be considered. In the case of halibut, this is Regulatory Sub-area 182; in the case of Tanner crab, this is Statistical area 114–23. These requirements 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. NPS intends to work closely with the Alaska Commercial Fisheries Entry Commission, the National Marine Fisheries Service and other knowledgeable sources to identify permit owners who meet the eligibility criteria defined for the authorized commercial fisheries in Glacier Bay proper.

The rule also closes certain inlets and areas, in the upper reaches of Glacier Bay proper, to commercial fishing and limits certain other areas to winter season trolling for king salmon by qualifying fishermen. There are a number of species-specific closure dates in Section 123, and the effective date of paragraph (a)(10)(i)–(iii) is delayed until January 1, 2000, to comply with the statute. The rule reaffirms closure of all designated wilderness areas in Glacier Bay National Park to commercial fishing activities.

By authorizing existing commercial fisheries to continue in park waters outside of Glacier Bay proper, Section 123 and the rule permit fishing to continue where more than 80% of the commercial harvest (reported biomass) has historically occurred. Additional harvest will continue in most of Glacier Bay proper during the life tenancy period of qualifying fishermen, supporting fishermen and their communities for many years. Approximately 18% of the park's marine waters are closed to commercial fishing by Section 123 and this rule; these closed waters have historically accounted for less than 10% of the total commercial harvest in the park. Nothing in the rule is intended to modify or restrict non-commercial fishing activities otherwise authorized under federal and non-conflicting state fishing regulations, nor to affect legislatively authorized commercial fishing activities within Glacier Bay National Preserve.

#### Analysis of Public Comments

Due to the enactment of Section 123 (on October 21, 1998), NPS reopened and extended the comment period on

the 1997 proposed rule and the accompanying Environmental Assessment (63 FR 68665, December 11, 1998; 64 FR 1573, January 11, 1999). NPS also mailed a copy of the **Federal Register** Notice of extension to persons and organizations that had previously submitted comments and invited them to provide additional comments in light of the new legislation. The analysis of public comment section in the re-proposed rule of August 2, 1999 (64 FR 41854), includes a comprehensive analysis of 1,557 comments submitted in response to the proposed rule and the enactment of Section 123. That information has continuing applicability and supplements this analysis.

#### Overview of Public Comments

The public comment period on the re-proposed rule for commercial fishing in Glacier Bay National Park was open from August 2 to September 16, 1999, and specifically sought input on the re-proposed eligibility criteria and application requirements for lifetime permits for authorized fisheries in Glacier Bay proper. NPS received 96 written comments, in the form of surface mail, faxes and electronic mail. NPS reviewed and considered all public comments submitted on the re-proposed rule. A summary of substantive comments is outlined below.

Thirty-seven percent of the comments received specifically stated support for some form of commercial fishing phase out in Glacier Bay National Park. Twenty-two percent specifically stated support for the continuation of commercial fishing.

Of all the responses received, 59% specifically commented on the eligibility criteria for commercial fishing lifetime access permits. Among those, more than half (54%) supported less stringent eligibility criteria than that stated in the re-proposed rule. The remaining comments on eligibility (46%) supported the eligibility criteria as a minimum standard, including 30% who sought more stringent eligibility criteria. Comments ranged from suggestions for more relaxed criteria for lifetime permits, such as one year of fishing during the eligibility period, to calls for the stronger criteria as proposed in 1997.

Twenty-two percent of all respondents commented specifically on the application process for commercial fishing lifetime access permits. Of those, 67% supported a less stringent process than that stated in the re-proposed rule. Thirty-four percent supported the process, as the minimum standard that the NPS should set for application

approval, 20% of which sought a more stringent process.

#### General Comments

Collectively, there were a number of comments and objections concerning various parts of the rule that, in fact, are derived directly from the statute. For example, a number of commenters requested that public comment be extended. Section 123 established a publication date of September 30, 1999, and NPS has used its best efforts to publish on that date; that necessarily affects the timing and length of the latest public comment period. It should also be noted that NPS has been actively seeking public comment for several years (as summarized at 64 FR 41856-8, August 2, 1999). Section 123 also requires that a "sworn and notarized affidavit be submitted," not just licenses and fish tickets (landing receipts). Section 123 authorized lifetime permits for those holding "a valid commercial fishing permit" who otherwise qualify, not boat owners or deckhands. On this point, however, NPS notes that Section 123, as amended, provides \$23 million to compensate "fish processors, fishing vessel crewmembers, communities and others negatively affected by the restrictions on commercial fishing in Glacier Bay National Park." One commenter (who will certainly qualify for a lifetime permit) felt he was "singled-out" because, unlike most other limited entry permit holders, he likes to longline in the west arm of the bay above 58°50' N latitude. Numerous commenters stated that commercial fishing was inappropriate in Glacier Bay and other national parks. NPS has considered these comments, but NPS must follow the statute. NPS also received many comments on related subjects that were, however, outside of the limited scope of this rule.

#### Regulatory Flexibility Analysis

NPS received a number of comments on the initial regulatory flexibility analysis. Those comments are discussed below in the summary of the final regulatory flexibility analysis that NPS has prepared as required by 5 U.S.C. 604.

#### Rationale for the Qualifying Period

A number of commenters questioned whether NPS had done enough to explain the method used to determine the necessary number of years in a given base year period to qualify for lifetime access to fish under the rule. One commenter felt that the NPS effort to "mirror similar lengths of time that have been allowed in other state and federal limited entry programs" was misplaced

because "those programs were influenced by conservation concerns." Other commenters, however, cited conservation concerns and the Glacier Bay 1996 Vessel Management Plan regulations which limits the amount of motor vessel traffic allocated to park visitors (61 FR 27008, May 30, 1996), to push for a shorter, more stringent phase out of commercial fishing. In the 1997 proposed rule, NPS proposed a longer history of participation in each fishery to prevent what the Wilderness Society now critically points out is possible: that people who started fishing after the 1991 rulemaking proposed to phase out all commercial fishing in seven years would be eligible for grandfather status to fish in Glacier Bay. However, even in that proposal, NPS recognized the need for some flexibility to ensure fairness to fishermen with a variable but recurring history of participation in Glacier Bay fisheries. Ultimately, and with public comment sharply divided, NPS selected shorter requirements for participation in the fishery in the qualifying base year periods (3 years in a 10-year base for salmon and Tanner crab fisheries, and 2 years in a 7-year base for halibut fisheries) to meet that objective. As a result, fishermen are required to show they have fished in Glacier Bay proper for approximately 30% of the years during the 7 and 10-year base periods to qualify. Resolving the commercial fishing issue in Glacier Bay has been a long and contentious process (see 64 FR 41856-9, August 2, 1999). Section 123 now directs NPS to decide who qualifies for lifetime access and who does not; NPS has drawn the line where it thinks it is fair, recognizing that it will not please everyone.

#### Cooperative Development of the Management Plan

Several commenters questioned the role that NPS and the State of Alaska will play in the cooperatively developed management plan required by Section 123. The plan will guide the regulation of the existing authorized fisheries at Glacier Bay National Park. One commenter stated that it was an "oversimplification" for NPS to state that the State manages fisheries to maintain sustained yield. In response, NPS notes that the Alaska State Constitution states: "Fish \* \* \* and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principal, subject to preference among beneficial uses." *Id.* at Article VIII, Section 4. Another commenter questioned what NPS considers as park values and purposes, and many commenters questioned how NPS

would protect the park's resources. After reviewing the re-proposed rule, NPS agrees that some clarification is necessary. Section 123 clearly states: "the management plan shall provide for commercial fishing in the marine waters within Glacier Bay National Park \* \* \* and shall provide for the protection of park values and purposes. \* \* \*" *Id.* Park values and purposes are identified in 16 U.S.C. 1, as amended, and are further defined by the enabling legislation and legislative history of Glacier Bay National Park. As a result, the cooperatively developed management plan must consider and respect the NPS mission in Glacier Bay National Park as defined and directed by Congress.

Section 123 also requires the management plan to prohibit any new or expanded fisheries, and provide for the opportunity for the study of marine resources. Therefore, a legislatively-mandated component of the cooperative management plan is the accommodation of scientific study. Section 123 does not require that all federal and federally-approved research within the park fall under the plan. The final rule also contains a provision that directs the superintendent to compile a list of existing fisheries and gear types used in the outer waters. NPS will work with the State, outer water fishermen and the public to cooperatively develop this list. However, should new or expanded fishing activities threaten park resources during development of the cooperative plan, the superintendent may implement an interim list.

Section 123 provides both a requirement and an opportunity for ongoing cooperation and collaboration between the State and federal government in the implementation of a jointly-developed fisheries management plan. NPS will work together with the State to provide the public with an opportunity to participate in the development of the cooperative management plan, independent of this rulemaking. NPS believes that the best long-term remedy for this jurisdictional issue 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 Section 123, as amended. NPS intends to devote its energies towards this goal.



### 1996 Vessel Management Plan (VMP) Regulations

A comment received from the Alaska Chapter of the Sierra Club stated that commercial fishing boats are not subject to the 1996 VMP regulations (36 CFR 13.65(b)). This assertion, however, is only partially correct; generally the VMP regulations apply to commercial fishing vessels. While commercial fishing vessels were exempted from the entry permit requirements of that rule by § 13.65(b)(2)(iii)(D), this rule will require such boats to obtain a National Park Service permit to enter the bay, from June 1 through August 31. The Sierra Club comment correctly pointed out that commercial fishing vessels were exempted from the restriction on operating within one-quarter nautical mile of a whale (§ 13.65(b)(3)(i)). This exemption was made due to the slow speeds and deliberate courses that commercial fishing vessels follow. However, the whale waters restrictions at § 13.65(b)(iv)(D)(1) apply unless a motor vessel (commercial or sport) is actually fishing (and not simply in transit). Seasonal motor vessel closures are specifically applicable (61 FR 27008, 27013, May 30, 1996).

NPS also notes that, regardless of whether an commercial fishing vessel operator possesses a commercial fishing lifetime access permit, the operator of a commercial fishing vessel can apply for a private vessel permit to enter Glacier Bay from June 1 through August 31, or visit Glacier Bay during the balance of the year, provided they follow the regulations that apply to private motor vessels and do not engage in commercial activities. Lifetime permittees are advised that the lifetime permit only allows access for commercial fishing; entering the park for other commercial purposes is prohibited, and entering Glacier Bay for recreation purposes (from June 1 through August 31) requires a private vessel permit. Commercial fishing vessels may, at any time, seek safe harbor in Glacier Bay National Park when faced with hazardous weather or sea conditions, mechanical problems, or other exigent circumstances.

### Resource Violations

One commenter suggested that a commercial fishing lifetime access permit holder who commits a resource violation in the park should have his or her permit revoked. Although NPS believes that most people who will qualify for the permit will respect park resources and regulations, NPS will not hesitate to ask a court to impose access restrictions on a permit holder who is

convicted of serious or repeated offenses. NPS will also seek the State's support in including provisions to this effect in the cooperatively developed management plan. NPS believes that such action would be consistent with Congress' direction that the plan "shall provide for the protection of park values and purposes." Section 123(a)(1).

### Boundaries and Maps

NPS will provide detailed maps and charts depicting non-wilderness and wilderness closures to every fisherman who receives a commercial fishing lifetime access permit for one of the three authorized Glacier Bay proper commercial fisheries. Others may contact the superintendent for a map of these closures.

### 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 (Section 123) (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 Section 123, as amended.

Section 13.65(a)(1) of the regulations provides definitions for the terms "commercial fishing" and "Glacier Bay" and "outer waters." The definition for "commercial fishing" is the same as used for the park's vessel regulations in § 13.65(b) of Title 36 of the Code of Federal Regulations (36 CFR). 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 Section 123. The definition for "Glacier Bay" mirrors the definition for "Glacier Bay Proper" that is provided in Section 123, and is also essentially the same as the definition used in 36 CFR 13.65(b)(1). 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 the non-wilderness marine waters of the park, as specifically provided for by Section 123, as amended. In addition to Glacier Bay, park waters that are affected by Section 123 include all of the "outer waters" of the park outside of Glacier Bay. This authorization for commercial fishing

supercedes the general regulatory prohibition on commercial fishing in the park found at 36 CFR 2.3(d)(4). The authorization, however, does not supercede other NPS regulations or exempt commercial fishermen or their vessels from any other generally applicable park regulations. Commercial fishing activities are to be conducted and managed in concert with park purposes and values. Paragraph (i) reflects the Section 123 requirement that the State of Alaska and the Secretary of the Interior cooperatively develop a fisheries management plan to guide the regulation of commercial fisheries in the park that will: reflect the requirements of Section 123, other applicable federal and state laws, and international treaties; serve to protect park values and purposes; prohibit new or expanded commercial fisheries; and, provide opportunity for the study of marine resources. Paragraph (ii) clarifies that waters designated as wilderness are closed to commercial fishing and related commercial activities. Paragraph (iii) has been added to address the Section 123 prohibition on any new or expanded fisheries and provides a mechanism for future implementation of that prohibition. Paragraph (iv) informs the public that maps and charts of the affected waters available from the superintendent.

Section 13.65(a)(3) of the regulation implements Section 123 requirements that the commercial fisheries in Glacier Bay are limited 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. Paragraph (ii) limits participation in the authorized commercial fisheries in Glacier Bay to individuals who have a non-transferable commercial fishing lifetime access permit issued by the superintendent. The requirement for this lifetime access permit will not go into effect until October 1, 2000. The delayed implementation date (the re-proposed rule would have adopted January 1, 2000, as the implementation date) is intended to allow sufficient time for fishermen to apply for, and receive, their access permits before the permit requirement takes effect. Fishermen are strongly advised to apply well before the October 1, 2000, deadline to ensure that their application is processed and approved by that date. This section also makes clear that the permits are non-transferable—reflecting the language and requirements of Section 123. However, if a temporary emergency transfer of a permit is approved by the Commercial Fisheries Entry

Commission (CFEC) due to illness or disability of a temporary, unexpected and unforeseen nature, NPS will also consider issuing a temporary lifetime access permit transfer for the period (generally, one year or less). In response to public comment, paragraph (iii) has been added to better protect park resources. This paragraph also provides a mechanism for future implementation of the cooperatively developed management plan.

Section 13.65(a)(4) of this regulation restates the Section 123 requirement that an applicant must possess a valid State limited entry commercial fishing permit for the district or statistical area encompassing Glacier Bay, for each fishery for which a lifetime access permit is being sought. Paragraph (ii) outlines the specific eligibility requirements that must be met to obtain a lifetime access permit for an authorized fishery in Glacier Bay. An applicant must have participated as a limited entry permit holder for the minimum number of years in the established base years period, and in the district or statistical area encompassing Glacier Bay, for each authorized fishery, for each fishery for which a lifetime access permit is being sought. 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 Section 123, as amended. A 12-month application period to obtain a lifetime access permit is described; conclusion of the eligibility determinations by October 1, 2000, may be important to ensure completion of the \$23 million compensation program authorized by Congress in the 1999 amendment to Section 123. Section 13.65(a)(5) outlines the specific type of documentation that an applicant must provide to the superintendent to obtain a lifetime access permit. Section 123 requires fishermen to provide a sworn and notarized personal affidavit attesting to their history of participation as a limited entry permit holder within Glacier Bay, during the qualifying period, for each fishery for which a lifetime access permit is being sought. NPS will provide a simple affidavit form to applicants upon request. Section 123 also requires applicants to provide other documentation that corroborates their history of participation in the fishery, and a copy of their current State of Alaska limited entry permit (and in the case of halibut, an International Pacific Halibut Commission quota share) that is

valid for the area that includes Glacier Bay for each fishery for which a lifetime access permit is sought. Licensing and landing histories—two types of readily available corroborating documentation—are required by this regulation. A certified printout of an applicant'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 an applicant's harvest activities in a specific commercial fishery by year and location, are available at no charge from the Alaska Department of Fish and Game (ADFG). A form is required from ADFG to obtain this information. NPS is aware of the limitations of some landing data. There is, for example, no separate statistical reporting unit for Glacier Bay for salmon trolling. Accordingly, the superintendent will consider salmon landing reports for District 114 as indirect evidence of participation in the Glacier Bay fishery, provided that such reports are supported by additional corroborating documentation of Glacier Bay landings. For the halibut and Tanner crab fisheries, because specific reporting areas are described for Glacier Bay, the superintendent may consider landing data from a unit or area immediately adjacent to Glacier Bay when additional and convincing corroborating documentation of landings in Glacier Bay is included. Landing reports must be for the reporting area immediately adjacent to Glacier Bay to be considered.

Section 13.65(a)(6) establishes October 1, 2000, as the deadline to apply for a commercial fishing lifetime access permit. This section also publishes the address where applications must be sent. Fishermen are strongly advised to apply well before the October 1, 2000, deadline to ensure their application is processed and approved by that date.

Section 13.65(a)(7) clarifies that the superintendent will make a written determination and provide a copy to the applicant. Applicants will be afforded an opportunity to provide additional information, if it is required. NPS anticipates that it could take 45 days or more to process and respond to an application, depending on the volume and completeness of the applications received. For this reason, applicants are strongly advised to apply well before the October 1, 2000, deadline, or at least 45 days in advance of anticipated fishing activities in Glacier Bay if that date is sooner.

Subsection 13.65(a)(8) describes the appeal procedures for an applicant to

follow if the superintendent finds the applicant to be ineligible. These procedures are similar to those in place for other NPS permit programs in Alaska.

Subsection 13.65(a)(9) makes clear that the lifetime access permits 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 eligible to participate in the fishery under federal and State laws. NPS expects to reissue the lifetime access permits on a five-year cycle. This will provide an opportunity for NPS to occasionally update the list of fishermen authorized to commercial fish in Glacier Bay. NPS will not charge a fee for these permits. Access permits will not be required for commercial fisheries authorized in the marine waters of the park outside Glacier Bay.

Section 13.65(a)(10), paragraphs (i)–(iii) describe several non-wilderness inlets within Glacier Bay that Section 123 closed to commercial fishing. The 1999 amendments to Section 123 implementation of these non-wilderness closures during the 1999 fishing season for the commercial halibut and salmon troll fisheries. The rule, therefore, delays the effective date of these three paragraphs until December 31, 1999, to accommodate the provisions of the Section 123 amendments. Wilderness areas, however, remained closed to all commercial fishing under the 1999 amendments, 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 fisherman who receive a lifetime access permit for an authorized Glacier Bay proper commercial fishery. Paragraph (i) 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. Paragraph (ii) describes the general closure of the west arm of Glacier Bay to commercial fishing, with the exception of trolling for king salmon by authorized commercial salmon fishermen during the State's winter season troll fishery (as per Section 123). Paragraph (iii) describes the general closure of 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, with a similar exception that allows authorized salmon fishermen to troll 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." Section 123(a)(4). 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, Mary Beth Moss, Chief of Resource Management, and Chad Soiseth, Aquatic Biologist, Glacier Bay National Park and Preserve; and Donald J. 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. Paul Hunter, National Park Service Alaska Support Office; and Russel J. Wilson, Denali National Park and Preserve also contributed.

The regulatory language of the re-proposed rule has been converted to the question and answer format in accordance with the Department of the Interior, Office of Regulatory Affairs, policy on Plain Language. No substantive changes to the proposed language have been made.

#### Compliance with Other Laws

##### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601 *et seq.*, the NPS has determined that this rule will have a significant impact on a substantial number of small business entities. The NPS has summarized the final regulatory flexibility analysis on the expected impact of this rule on those small business entities as follows.

(1) This Rule is published in accordance with the provisions of Section 123 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 (Section 123), as amended. The rule establishes special regulations for commercial fishing in the marine waters of Glacier Bay National Park. The rule implements provisions in Section 123 by:

- Closing specifically identified areas of non-wilderness waters in Glacier Bay proper and all wilderness waters within Glacier Bay National Park to commercial fishing.
- Limiting commercial fishing in Glacier Bay proper to three specific commercial fisheries.
- Establishing a "grandfathering" process to allow qualifying fishermen in the three authorized commercial fisheries to continue fishing in the

remaining waters of Glacier Bay proper under nontransferable lifetime permits.

- Clarifying that the marine waters of Glacier Bay National Park outside of Glacier Bay proper will remain open to various existing commercial fisheries.

(2) The following is a summary of the comments relating to the initial Regulatory Flexibility Analysis and the NPS assessment and response.

Several commenters challenged the NPS analysis of the impact the rule would have on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). One commentator specifically contended that NPS was incorrect in certifying that the rule did not have a significant economic impact on a substantial number of small entities, and should therefore have conducted the analysis required under the Regulatory Flexibility Act. NPS would like to point out that for the August 2, 1999 re-proposed rule it did not so certify, and that it did conduct the Regulatory Flexibility Analysis required under 5 U.S.C. 601 *et seq.*

Another commenter asked whether NPS took into account the effects which the rule would have on the value of assets, (*e.g.*, vessels, fishing gear, permits). NPS stated in its economic analysis that it did not account for the effect of the rule on assets. NPS believes that any asset effects will be small for two reasons: (1) the market for used equipment is extensive and the effect of fishing restrictions in one venue (Glacier Bay) on market prices is minimal, and (2) there are opportunities for fishermen displaced to replace significant portions of lost revenues in other fishing venues. Further, Congress has appropriated funds to compensate for estimated economic losses. Since NPS and the State of Alaska have not yet developed the decision rules and eligibility criteria for dispensing these funds, the opportunity to identify effects that warrant compensation still exists.

Several commenters argued that the NPS's analysis was flawed, and in particular, that: the analysis did not meet the standards of 5 U.S.C. 601 *et seq.*; NPS did not reveal the details of its study design; and, NPS failed to use the best scientific data available. NPS consulted extensively with staff at the Small Business Administration regarding the design of the study, and was careful to comply with the standards of 5 U.S.C. 601 *et seq.* Although NPS did not publish the State of Alaska's Commercial Fisheries Entry Commission (CFEC) data, nor the individual calculations made therefrom, it fully described the nature of these calculations and published the cumulative results. The NPS also used

the best scientific data available for its analysis.

A few commenters questioned NPS's finding that the rule is not a significant regulatory action for purposes of E.O. 12866 (Regulatory Planning and Review) and 2 U.S.C. 1501 *et seq.* (Unfunded Mandates Reform Act). In response, NPS notes that we have determined that the rule is significant under E.O. 12866 but not under 2 U.S.C. 1501. The NPS estimated that the present value of the income effects of the rule would be less than \$9.2 million. A present value of \$9.2 million is equivalent to \$276,000 annually, assuming a discount rate of 3% in perpetuity, or \$358,000 annually, if the full impact is absorbed over 50 years. NPS used the best scientific data available to arrive at this estimate, and made what it believed to be very conservative assumptions in conducting the analysis. As described in the economic analysis, NPS based its analysis on (1) data collected by the CFEC on harvest sizes and values, location of catch, and permittee participation by venue and (2) two studies conducted by Dr. Jeff Hartman, Alaska Department of Fish and Game. NPS has confidence in Dr. Hartman's analysis; it was carefully designed and executed and formed the basis of Congress's \$23 million appropriation for compensation.

No changes were made in the Final Rule as a result of the public comment detailed above. NPS notes, however, that the eligibility criteria adopted by this rule (as proposed in the re-proposed rule) are less stringent than the criteria originally proposed in the 1997 proposed rule. NPS chose the less stringent criteria because public comment and the initial regulatory flexibility analysis led NPS to conclude that the more stringent criteria would have adversely affected the economic well being of an unacceptably high number of fishermen as well as local communities.

(3) The rule will apply primarily to current holders of a valid limited-entry, commercial fishery permit for Tanner crab, halibut, and/or salmon troll fisheries that have fished within Glacier Bay proper or adjacent areas over the ten year period 1989–98. Because some permit holders may hold permits for multiple fisheries and because statistical reporting units for which permit holders report their catch align poorly with park boundaries or have changed configuration over time it is extremely difficult to estimate the number of permit holders impacted by the rule (*i.e.*, those displaced by, or not qualifying to continue fishing under, the

rule). Our best estimates, obtained from the CFEC, indicate that 40–50 Tanner crabbers, 80–220 halibut fishermen, 80–330 hand trollers and 100–380 power trollers would be displaced from Glacier Bay proper. Estimates for salmon trollers encompass both summer and winter fisheries openings for Statistical Area 114, which includes Cross Sound and Icy Strait in addition to Glacier Bay proper. The troll fishery in the Bay proper typically occurs during the winter opening and the number of affected entities is most likely closer to the lower estimate for this fishery. Other small entities which are likely to be affected by this final rule include: vessel owners who are not permit holders, crew members, seafood processing firms, seafood processing laborers, lost tax revenues to local government jurisdictions, and fishing support sector small entities in local communities (*i.e.*, chandlerys, fishing gear and hardware stores, fuel sales, grocery stores, boat mechanics, etc.). Fewer than 40 vessel owners who are not permit holders are currently estimated to be affected by this final rule, although the number of vessels that will continue to be leased by qualifying permit holders and will continue to participate in Glacier Bay proper fisheries is unknown. It is currently not possible to estimate the number of small entities in these other classes because many of the spatial and temporal parameters of projected affects are currently not well known.

(4) The projected reporting, record keeping and other compliance requirements are described in the rule. Section 13.65(a)(5) outlines the specific type of documentation that an applicant must provide to the superintendent to obtain a lifetime access permit. Section 123 requires fishermen to provide a sworn and notarized personal affidavit attesting to their history of participation as a limited permit holder within Glacier Bay, during the qualifying period, for each fishery for which a lifetime access permit is being sought. Section 123 also requires applicants to provide other documentation that corroborates their history of participation in the fishery, and a copy of their current State of Alaska limited entry permit (and in the case of halibut, an International Pacific Halibut Commission quota share) that is valid for the area that includes Glacier Bay for each fishery for which a lifetime access permit is sought. Licensing and landing histories—two types of readily available corroborating documentation—are required by this regulation. A certified printout of an applicant'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 an applicant's harvest activities in a specific commercial fishery by year and location, are available at no charge from the Alaska Department of Fish and Game (ADFG).

The classes of small entities which will be subject to the requirement are current limited entry permit holders for the Glacier Bay commercial halibut fishery who have participated as a permit holder in that fishery for at least two years during the period 1992–1998, and current limited entry permit holders for the Glacier Bay salmon or Tanner crab commercial fisheries who have participated as a permit holder in that fishery for at least three years during the period 1989–1998. No professional skills are necessary for preparation of the report or record. All necessary materials are available either from ADFG or the CFEC.

(5) NPS has and will continue to mitigate the significant economic impact on small entities impacted by this statute by the following actions:

- This rule adopts October 1, 2000 as the effective date of the Glacier Bay proper permit requirement, rather than the re-proposed rule date of January 1, 2000 to give applicants more time to collect the required documentation and apply for the permit.
- This rule selected the less stringent eligibility criteria for lifetime permits that was published in the re-proposed rule (two years in seven, and three years in ten) rather than the eligibility criteria that was originally proposed (six years in ten).
- NPS will administer, in a fair and timely manner, the mandated 23 million dollar compensation program, which will recompense small entities affected by the phase-out of commercial fishing in specified areas of Glacier Bay National Park.

Most aspects of the rule are direct requirements of Section 123. Section 123 also directed the Secretary of the Interior to determine the eligibility criteria for the Glacier Bay fishery. The eligibility criteria adopted by this rule (as proposed in the re-proposed rule) is less stringent than the criteria originally proposed in the 1997 proposed rule. NPS chose the less stringent criteria because public comment and the initial regulatory flexibility analysis led NPS to conclude that the more stringent criteria would have adversely affected the economic well being of an unacceptably high number of fishermen as well as local communities. The reasons for not selecting alternative criteria are

discussed extensively both above and in the re-proposed rule (64 FR 41854, 41860–63, August 2, 1999).

NPS has placed a copy of the final regulatory flexibility analysis on file in the Administrative Record at the address specified in the **ADDRESSES** section. Copies are available upon request.

#### *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 program 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 permit for lifetime access to three commercial fisheries authorized in Glacier Bay proper.

b. This rule will not create inconsistencies with other agencies' actions. Section 123 calls for the Secretary and the State of Alaska 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. Section 123 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 permit for lifetime access to three commercial fisheries authorized in Glacier Bay proper.

d. This rule raised novel legal or policy issues regarding the management of fisheries in Glacier Bay National Park.

### *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;
- b. will not cause an increase in costs or prices for consumers, individual industries, Federal, State or local government 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.
- b. The Department has determined and certifies pursuant to 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. (See Regulatory Flexibility Act Section.)

### *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 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 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 language to provide clear standards and to ensure that the rule is easily understood. We consulted with the Department of the 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 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 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 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.

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, DC 20503.

### *National Environmental Policy Act*

In April 1998, NPS released a comprehensive Commercial Fishing Environmental Assessment (EA) that described and addressed the potential environmental impacts of the proposed action (the 1997 proposed rule) and four alternatives for managing commercial fishing activities in the marine waters of the park. On October 21, 1998 Section 123 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 (Section 123), was passed by Congress and signed into law. Congress passed Section 123 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 Section 123, clarified and limited the Secretary of the Interior's discretionary authority with respect to authorizing commercial fishing in Glacier Bay National Park. Section 123 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 existing fisheries under a cooperatively developed state/federal management plan. Based on the information in the EA a finding of no significant impact was determined and no environmental impact statement will be prepared.

### **Effective Date**

In accordance with 5 U.S.C. (d)(3) this rule is effective October 20, 1999, with the exception of paragraphs (a)(10) (i)-(iii) which take effect on January 1, 2000. We find good cause to implement this regulation to meet the requirement mandated by Congress in Pub. L. 106-31 Sec. 501(e).

### **List of Subjects in 36 CFR Part 13**

Alaska, National parks, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the National Park Service amends 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: authorizations, closures and restrictions.*

(1) *What terms do I need to know?*

(i) *Commercial fishing* means conducting fishing activities under the appropriate commercial fishing permits and licenses as required and defined by the State of Alaska.

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

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

(2) *Is commercial fishing authorized in the marine waters of Glacier Bay National Park?* Yes—Commercial fishing is authorized within the outer waters of the park and within the non-wilderness waters of Glacier Bay, subject to the provisions of this chapter.

(i) Commercial fishing shall be administered pursuant to A cooperatively developed State/federal park fisheries management plan, international conservation and management treaties, and existing federal and Non-conflicting State law. The management plan shall provide for the protection of park values and purposes, the prohibition on any new or expanded fisheries, and the opportunity to study marine resources.

(ii) Commercial fishing or conducting an associated buying or processing operation in wilderness waters is prohibited.

(iii) A new or expanded fishery is prohibited. The Superintendent shall compile a list of the existing fisheries and gear types used in the outer waters and follow the procedures in §§ 1.5 and 1.7 of this chapter to inform the public.

(iv) Maps and charts showing which marine areas of Glacier Bay are closed

to commercial fishing are available from the Superintendent.

(3) *What types of commercial fishing are authorized in Glacier Bay?* Three types of commercial fishing are authorized in Glacier Bay non-wilderness waters: longline fishing for halibut; pot and ring fishing for Tanner crab; and trolling for salmon.

(i) All other commercial fishing, or a buying or a processing operation not related to an authorized fishery is prohibited in Glacier Bay.

(ii) On October 1, 2000, each fishery will be limited to fishermen who qualify for a non-transferable commercial fishing lifetime access permit (see paragraph (a)(4) of this section). Commercial fishing without a permit issued by the superintendent, or other than in accordance with the terms and conditions of the permit, is prohibited.

(iii) The Superintendent shall include in a permit the terms and conditions that the superintendent deems necessary to protect park resources. Violating a term or condition of the permit is prohibited.

(4) *Who is eligible for a Glacier Bay commercial fishing lifetime access permit?* A Glacier Bay commercial fishing lifetime access permit will be issued by the superintendent to fishermen who have submitted documentation to the superintendent, on or before October 1, 2000, which demonstrates to the satisfaction of the superintendent that:

(i) They possess valid State limited entry commercial fishing permits for the district or statistical area encompassing Glacier Bay for each fishery for which a lifetime access permit is being sought; and,

(ii) They have participated as limited entry permit holders for the district or statistical area encompassing Glacier Bay for each fishery for which a lifetime access permit is being sought.

(A) For the Glacier Bay commercial halibut fishery, the Applicant must have participated as a permit holder for at least two years during the period 1992–1998.

(B) For the Glacier Bay salmon or Tanner crab commercial fisheries, the applicant must have participated as a permit holder for at least three years during the period 1989–1998.

(5) *What documentation is required to apply for a commercial fishing lifetime access permit?* The required documentation includes:

(i) The applicants full name, date of birth, mailing address and phone number;

(ii) A notarized affidavit, sworn by the applicant, attesting to his or her history of participation as a limited permit

holder in Glacier Bay, during the qualifying period, for each fishery for which a lifetime access permit is being sought;

(iii) A copy of the applicant's current State of Alaska limited entry permit and in the case of halibut an International Pacific Halibut Commission quota share, that is valid for the area that includes Glacier Bay, for each fishery for which a lifetime access permit is sought;

(iv) Proof of the applicant's permit and quota share history for the Glacier Bay fishery during the qualifying period;

(v) Documentation of commercial landings for the Glacier Bay fishery during the qualifying periods, i.e., within the statistical unit or area that includes Glacier Bay: for halibut, regulatory sub-area 184; for Tanner crab, statistical areas 114–70 through 114–77. For salmon, the superintendent will consider landing reports from District 114; however, the superintendent may require additional documentation that supports the applicant's declaration of Glacier Bay salmon landings. For halibut and Tanner crab, the superintendent may consider documented commercial landings from the unit or area immediately adjacent to Glacier Bay (in Icy Strait) if additional documentation supports the applicant's declaration that landings occurred in Glacier Bay.

(vi) Any additional corroborating documentation that might assist the superintendent in a timely determination of eligibility for the access permits.

(6) *Where should the documentation for a lifetime access permit be sent?* Before October 1, 2000, all required information (as listed in paragraph (a)(5) of this section) should be sent to: Superintendent, Attn: Access Permit Program, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826.

(7) *Who determines eligibility?* The superintendent will make a written determination of an applicant's eligibility for the lifetime access permit based on information provided. A copy of the determination will be mailed to the applicant. If additional information is required to make an eligibility determination, the applicant will be notified in writing of that need and be given an opportunity to provide it.

(8) *Is there an appeals process if a commercial fishing lifetime access permit application is denied?* Yes—If an applicant's request for an a commercial fishing lifetime access permit is denied, the superintendent will provide the applicant with the reasons for the denial in writing within 15 days of the

decision. The applicant may appeal to the Regional Director, Alaska Region, within 180 days. The appeal must substantiate the basis of the applicant's disagreement with the Superintendent's determination. The Regional Director (or his representative) will meet with the applicant to discuss the appeal within 30 days of receiving the appeal. Within 15 days of receipt of written materials and the meeting, if requested, the Regional Director will affirm, reverse, or modify the Superintendent's determination and explain the reasons for the decision in writing. A copy of the decision will be forwarded promptly to the applicant and will be the final agency action.

(9) *How often will commercial fishing lifetime access permit be renewed?* The superintendent will renew lifetime access permit at 5-year intervals for the lifetime of a permittee who continues to hold a valid State limited entry commercial fishing permit, and for halibut an International Pacific Halibut Commission quota share, and is otherwise eligible to participate in the fishery under federal and State law.

(10) *What other closures and restrictions apply to commercial fishermen and commercial fishing vessels?*

The following are prohibited:

(i) Commercial fishing in the waters of Geikie, Tarr, Johns Hopkins and Reid Inlets.

(ii) Commercial fishing in the waters of the west arm of Glacier Bay north of 58°50'N latitude, except commercial fishermen who have been authorized by the superintendent to troll for salmon may troll for king salmon during the period October 1 through April 30, in compliance with state commercial fishing regulations.

(iii) Commercial fishing in 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, except commercial fishermen who have been authorized by the superintendent to troll for salmon may troll 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]

\* \* \* \* \*

**Donald J. Barry,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 99-27297 Filed 10-19-99; 8:45 am]

BILLING CODE 4310-70-P

Appendix D, Part 1: List of Lifetime Access Permits (LAP), at maximum permit count (165), 2005

Name	Halibut	Salmon	Tanner	Boat Name
Archer, Gene		S049		<i>Ruby J</i>
Babich, Elizabeth	H041			
Bacon, James	H063			
Baker, Van		S021		<i>Apex</i>
Barnes, Paul	H074			<i>Anita B</i>
Bartoo, Russell	H005			
Bean, Victor		S 091	T063	<i>Donna-Ann</i>
Baumgart, Henry A.	H135			
Beason, Randy		S006		<i>Oceanaire</i>
Beeson, Wayne R	H026			<i>Kokomo</i>
Berwind, Jeff		S051		<i>Bifrost</i>
Bigsby, Fred	H007			<i>Rustler</i>
Botts, Thomas	H120			<i>Bonnie J</i>
Box, Steve	H107			
Boyce, Eleanor	H072			
Boyce, Richard	H065			<i>Eleanor S</i>
Baumgart, Henry A	H135			
Braman, Ervil E.		S095		
Breseman, John			T064	
Broderson, Mark	H051			
Buttram, Roger	H109	S069	T043	<i>Escape</i>
Carroll, William		S081		<i>Prospector</i>
Cesar, Kermit		S050		
Chase, Arthur		S080		
Chase, Donald			T050	
Clark, Robert	H106			<i>Jubilee</i>
Clements, Charles	H053			
Coby, Jamie			T058	<i>Dustin Sea</i>
Cohen, Charles	H089			
Cole, Lester		S048		
Craig, Joe	H044			<i>Njord</i>
Craig, Sandra	H094			
Davis, Richard	H070	S053		<i>Sundee Lynn</i>
Dellazoppa, Paul	H066			
Denkinger, Troy			T028	<i>Confidence</i>
DesRosiers, Garry A	H099	S027		<i>Laperia</i>
Durnil, Ronald D.		S092		<i>Larkspur</i>
Dybdahl, James	H090	S061		
Edwards, Duane	H025			
Edwards, Mark	H064			<i>Blue Boy</i>
Eichner, Ken			T034	
Emerson, Joseph	H035	S035		<i>Sum Toi</i>



Name	Halibut	Salmon	Tanner	Boat Name
Emerson, Philip J.		S040		<i>Imperial</i>
Erickson Jr., James	H080	S054	T048	<i>Caroline</i>
Etheridge, John	H088	S059		
Farley, Eugene	H136	S097	T065	<i>Patricia S.</i>
Fennimore, Howard	H119			
File, Scott F.	H003			<i>Icy Queen</i>
Fisher, Alan	H121	S082		<i>Rosalyn</i>
Gonzalez, Ivan	H040	S037	T035	<i>Progress</i>
Gray Sr., Robert	H069	S052		<i>Robetta-J</i>
Gregg, Randal	H078		T049	
Gregg, Richard V.			T047	
Gregg, Roger	H082			<i>Shelikov</i>
Gross, Roger	H071			
Gudmundson, Dennis	H008			<i>Kaemik</i>
Hammonds, David	H124	S089	T124	<i>Kay Lu</i>
Hay, Michael	H009			<i>Julie Ann</i>
Hinchman Sr., John	H043			<i>Johnny A.</i>
Hines, Kenneth	H001	S001		
Howard, Ray	H098			
Howe, Fred		S010		<i>Apollo</i>
Hughes, Norman	H022			<i>Chilkat</i>
Hurley, Raymond	H081			
Hutton, William	H092	S058		<i>Evening Breeze</i>
Ihnat, Michael	H104	S076		
Jackson, John M.	H108	S068		
Jensen, Robert	H011			
Jones, Stan	H012			
Judson, Norman	H068			<i>Debbie Lynn</i>
Kalk, Donald			T052	<i>Osprey</i>
Karuza, John			T054	<i>Vis</i>
Kerr, Carl	H096		T032	<i>Keta</i>
Kohlhase, Robert	H118			<i>Northern Sea</i>
Lampe, Robert		S084		
Land, David J.	H130			
Larson, James L.	H124			<i>Last Unicorn</i>
Lindoff, Harvey		S090		
Loescher, Robert		S057		<i>Tlingit Boy II</i>
Lundahl, Richard	H086	S066		
Lundahl, Tamara	H083			
MacDonald Sr., Terry			T036	
Martin, James A.			T042	<i>Middle Pass</i>
Martinsen, Krist	H116	S075		<i>Constance</i>
Massey, Andrew	H102			<i>Tia Lynn</i>
McKinley, Alfred		S056		<i>Sea Bird</i>

Name	Halibut	Salmon	Tanner	Boat Name
Metcalf, Matthew	H126		T062	
Miller, James L.			T059	
Mills, Robert L.		S033		
Moore, James	H125			<i>Aljac</i>
Moore, Joshua	H048			<i>Vulcan</i>
Morin, Allen			T045	
Morris, Norman	H019			
Morris, Michael Alan	H029			<i>Tsunami</i>
Nance, Gerald E.	H024			
Nash, William	H079			
Nelson Jr., Norval E.			T061	<i>Star of the Sea</i>
Nelson, Norval H.			T039	<i>Christian</i>
Nigro, Michael		S083		<i>Kabsteen</i>
Nilsen, Matt J.	H030			<i>Bidarka</i>
Nilsen, Peter A.	H031			<i>Seaforth</i>
Norris, James D.	H038			<i>Courseer</i>
Norris, Rennie D.	H039			
Nyman, Robert	H060			
Nyman, Ronald	H105			<i>Mar-Jo-II</i>
Ogilvy, Douglas	H064	S062		<i>Taurus</i>
Ohlson, Michael	H041	S041		
Osborne, Arthur	H067			<i>Mongoose</i>
Padon, Bradley		S067		<i>Surf Bay</i>
Pasquan, John	H128			<i>Hungry Jack</i>
Perkins, William		S087		<i>Igloo</i>
Perry, James	H077			<i>Greyhound</i>
Peterson, Erik L		S036		
Peterson, Floyd		S020		
Philips, James	H052			<i>Nancy K</i>
Piedra III, Charles	H057	S046		
Pierce, Stephen	H127			
Place, Jon			T055	<i>Mara</i>
Pukis, Lloyd	H059		T056	
Riddle, Philip	S042		T040	
Riederer, Dwight	H073			
Robinson, Calvin			T047	<i>Lady Jo</i>
Roddy, Peter			T044	<i>C-Ward</i>
Rosvold, Eric			T013	<i>Defiant</i>
Rutter, Sigurd	H056	S044		<i>Lois D</i>
Saunders, John M.	H014			<i>Shotgun</i>
Savland, Stanley	H123	S085	T046	<i>Steadfast</i>
Savonen, Lynn	H097			<i>Eve</i>
Schade, Edward		S055		<i>Maria</i>
Schafer, Vincent	H075			<i>Eve</i>

Name	Halibut	Salmon	Tanner	Boat Name
Schoonover, Kenneth		S088		<i>CJ</i>
Shelton, Jev	H054			
Shepherd, Terry		S086		<i>Judy Ann</i>
Skaflestad, Kjolborn		S034		<i>Skiff</i>
Smith, Bruce	H042	S038	T037	<i>No Seeum</i>
Soboleff, Ross V.		S079		
Sparks, Evans W.	H122			<i>Samantha Dawn</i>
Stuart Jr., Raleigh	H015			<i>Reluctant</i>
Stuart, Travis	H115			<i>Genevieve</i>
Sullivan, Patrick	H103	S078		<i>Sika</i>
Swanson, Scott	H047	S040		<i>Chasina</i>
Szymanski, Jim	H095			
Thomas Jr., William	H101			
Thompson, Kim	H061	S047		<i>Eddysez</i>
Thurn, Arthur	H130			<i>Skibo</i>
Traibush, Tom	H085		T051	
Turner, Pedr	H055	S043	T041	
Tuttle, Sherry	H129	S093		<i>Rose</i>
Uber, Thomas		S023		
Visscher, Scott	H016			<i>Georgia</i>
Vlasak, Edwin	H058			
Walker, Donald	H062			
Walling, Jessie	H087			<i>Gimmie Shelter</i>
Walling, Roger	H100			<i>Sea Hawk</i>
Warfel, Frank L.	H002			<i>Iver P. Nore</i>
Warfel, Frank W,	H004			
Warm, Waldemar		S041		
Westcott, Dan		S017		
Westlund, Bonnie	H049			
White, Vince			T060	
Will, Craig	H050			
Willis, Roy	H045	S039		<i>Chan III</i>
Wirta, Terry	H117			<i>Rose Marie</i>
Wood, Stan	H018			
Young, Kirby		S065		
Young, Steve	H076			<i>Quest</i>

**Southeast Alaska Region: n=143 (86.6%)**

Juneau—47 (28.5%)  
 Hoonah—19 (11.5%)  
 Haines—18 (10.9%)  
 Gustavus—17 (10.3%)  
 Sitka—14 (8.5%)  
 Pelican—9 (5.5%)  
 Petersburg—7 (4.3%)  
 Elfin Cove—4 (2.4%)  
 Wrangell—4 (2.4%)  
 Ketchikan—3 (1.8%)  
 Port Alexander—1 (.6%)

**Other Regions: n=22 (13.4%)**

Other parts of Alaska—1 (.6%)  
 Washington State,  
 mostly Puget Sound—17 (10.3%)  
 Other States—4 (2.4%)

**Appendix E: Dungeness Crabber Buy-outs**

<u>Applicant Name</u>	<u>Category</u>	<u>Amount</u>
Dung. crabbers bought out		
Charles W. Clements	Permit Holder	\$501,379.00
Otto Florschutz, III	Permit Holder	\$672,413.00
Daniel Foley	Permit Holder	\$400,000.00
Mathew Metcalf	Permit Holder	\$441,980.00
Lawton Paddock	Permit Holder	\$400,000.00
Mark Peterson	Permit Holder	\$416,445.00
Rodney Selvig	Permit Holder	\$400,000.00
Naomi Sundberg	Permit Holder	\$465,800.00
Thomas Traibush	Permit Holder	\$1,050,677.00
	total	\$4,748,694.00

GLBA COMPENSATION PROGRAM

Final Payout by Category (\$23,000,000)

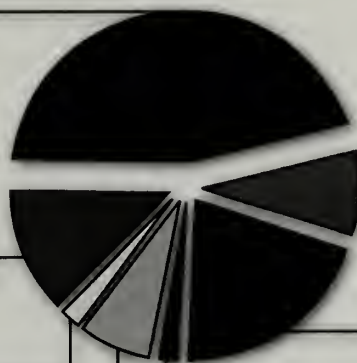
Permit Holders  
\$10,692,564/46.5%

Communities  
\$3,013,000/13.1%

Fish Tax Revenue  
\$391,000/1.7%

Support Businesses  
\$1,726,095/7.5%

Processor Employees  
\$392,505/1.7%



Vessel Crew  
\$1,933,830/8.4%

Processors  
\$4,851,006/2.1%

To access the full compensation program documents (314 pages) go to <http://www.gov/glba/comfish.htm>

Decree

**SUPREME COURT OF THE UNITED STATES**STATE OF ALASKA *v.* UNITED STATES OF AMERICA

ON BILL OF COMPLAINT

No. 128, Orig. Decree entered January 23, 2006

The Report of the Special Master is received and ordered filed. The joint motion for entry of decree is granted, and the proposed decree is entered. Gregory E. Maggs, Esq., of Washington, D. C., the Special Master in this case, is hereby discharged with the thanks of the Court. THE CHIEF JUSTICE took no part in the consideration or decision of this case.

**DECREE**

On June 12, 2000, the Court granted the State of Alaska leave to file a bill of complaint to quiet title relating to certain marine submerged lands in Southeast Alaska. 530 U. S. 1228. The Court appointed a Special Master to direct subsequent proceedings and to submit such reports as he deemed appropriate. 531 U. S. 941 (2000). On January 8, 2001, the Court granted the State of Alaska leave to file an amended complaint. 531 U. S. 1066. On March 5, 2001, the Court referred the State of Alaska's amended complaint and the United States' answer to the Master. 532 U. S. 902. From 2001 to 2004, the Special Master oversaw extensive briefing of motions for summary judgment relating to the various counts of the amended complaint. On April 26, 2004, the Court received and ordered filed the Report of the Special Master on Six Motions for Partial Summary Judgment and One Motion for Confirmation of a Disclaimer of Title (March 2004). 541 U. S. 1008. On June 6, 2005, this Court overruled the State of Alaska's exceptions and directed the parties to prepare and submit an appropriate decree to the Master for the Court's consideration. 545 U. S. \_\_\_\_, \_\_\_\_. The

## Decree

parties have prepared a proposed decree, and the Master recommends its approval.

Accordingly,

## IT IS ORDERED, ADJUDGED, AND DECREED

1. On counts I and II of the amended complaint of the State of Alaska, judgment is granted to the United States, and the State of Alaska shall take nothing. As between the State of Alaska and the United States, the United States has title to the marine submerged lands underlying the pockets and enclaves of water at issue in counts I and II of the State of Alaska's amended complaint, which are those marine submerged lands that are more than three geographical miles from every point on the coastline of the mainland or of any individual island of the Alexander Archipelago. See *Alaska v. United States*, 545 U. S. \_\_\_, \_\_\_ (2005). For purposes of determining the United States' title:

(a) the term "marine submerged lands" means all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide (Submerged Lands Act, ch. 65, Tit. I, §2(a)(2), 67 Stat. 29 (43 U. S. C. §1301(a)(2));

(b) the term "coast line" means "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters," as defined in §2(c) of the Submerged Lands Act, ch. 65, Tit. I, 67 Stat. 29 (43 U. S. C. §1301(c)); and

(c) the line marking the seaward limit of inland waters shall be determined in accordance with the Court's rulings that: (i) the waters of the Alexander Archipelago do not constitute historic inland waters; and (ii) "North Bay," "South Bay," Sitka Sound, and Cordova Bay, as designated in this action, do not constitute juridical bays. See *Alaska v. United States*, 545 U. S., at \_\_\_-\_\_\_.

## Decree

2. On count IV of the amended complaint of the State of Alaska, judgment is granted to the United States, and the State of Alaska shall take nothing. As between the State of Alaska and the United States, the United States has title to the marine submerged lands within the exterior boundaries of Glacier Bay National Monument as those boundaries existed on the date of the State of Alaska's admission to the Union. See *Alaska v. United States*, 545 U. S., at \_\_\_\_\_. For purposes of determining the United States' title, the term "marine submerged lands" means all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide (Submerged Lands Act, ch. 65, Tit. I, §2(a)(2), 67 Stat. 29 (43 U. S. C. §1301(a)(2))).

3. The motion of the State of Alaska for summary judgment on count III is dismissed as moot, and count III is dismissed for lack of jurisdiction. In accordance with 28 U. S. C. §2409a(e), the following disclaimer of the United States is confirmed:

## DISCLAIMER

(1) Pursuant to the Quiet Title Act, 28 U. S. C. §2409a(e), and subject to the exceptions set out in paragraph (2), the United States disclaims any real property interest in the marine submerged lands within the exterior boundaries of the Tongass National Forest, as those boundaries existed on the date of Alaska Statehood.

(2) The disclaimer set out in paragraph (1) does not disclaim:

(a) any submerged lands that are subject to the exceptions set out in §5 of the Submerged Lands Act, ch. 65, Tit. II, 67 Stat. 32 (43 U. S. C. §1313);

(b) any submerged lands that are more than three geographic miles seaward of the coastline;

(c) any submerged lands that were under the juris-



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diction of an agency other than the United States Department of Agriculture on the date of the filing of the complaint in this action;

(d) any submerged lands that were held for military, naval, Air Force, or Coast Guard purposes on the date that Alaska entered the Union.

(3) For purposes of this disclaimer:

(a) The term “coast line” means “the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters,” as defined in §2(c) of the Submerged Lands Act, ch. 65, Tit. I, 67 Stat. 29 (43 U. S. C. §1301(c)).

(b) The term “submerged lands” means “lands beneath navigable waters” as defined in §2(a) of the Submerged Lands Act, ch. 65, Tit. I, 67 Stat. 29 (43 U. S. C. §1301(a)).

(c) The term “marine submerged lands” means “all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide.” See Submerged Lands Act, ch. 65, Tit. I, §2(a)(2), 67 Stat. 29 (43 U. S. C. §1301(a)(2)).

(d) The term “jurisdiction” has the meaning of that word in the Quiet Title Act, 28 U. S. C. §2409a(m).

(e) The exception set out in §5(a) of the Submerged Lands Act, ch. 65, Tit. II, 67 Stat. 32 (43 U. S. C. §1313(a)), for lands “expressly retained by or ceded to the United States when the State entered the Union” does not include lands under the jurisdiction of the Department of Agriculture unless, on the date Alaska entered the Union, that land was:

(i) withdrawn pursuant to act of Congress, Presidential Proclamation, Executive Order, or public land order of the Secretary of Interior, other than the Presidential Proclamation of August 20, 1902 (32 Stat. 2025), which established the Alexander Archipelago

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Forest Reserve; the Presidential Proclamation of September 10, 1907 (35 Stat. 2152), which created the Tongass National Forest; or the Presidential Proclamations of February 16, 1909 (35 Stat. 2226), and June 10, 1925 (44 Stat. 2578), which expanded the Tongass National Forest; or

(ii) subject to one or more of the following pending applications for withdrawal pursuant to 43 CFR Part 295 (1954 and Supp. 1958), designated by Bureau of Land Management serial numbers: AKA 022828; AKA 026916; AKA 029820; AKA 031178; AKA 032449; AKA 033871; AKA 034383; AKJ 010461; AKJ 010598; AKJ 010761; AKJ 011157; AKJ 011168; AKJ 011203; AKJ 011210; AKJ 011212; AKJ 011213; AKJ 011291.

4. The Court retains jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as from time to time may be deemed necessary or advisable to effectuate and supplement this Decree and the rights of the respective parties. In all other respects, this Decree is final.

# Navigating Troubled Waters:

## Part 2: Hoonah's "Million Dollar Fleet"

U.S. Department of the Interior

National Park Service

Glacier Bay National Park and Preserve  
Gustavus, Alaska

Author: James Mackovjak

2010



## Dedication

This work is dedicated to Hoonah seine boat captain Joe White, a pioneer and a highliner in one of the most challenging and dynamic fisheries in Alaska.



The "Million Dollar Fleet" sits at rest. After the 1944 fire, Hoonah got a city dock, seen here. The boat harbor was still some decades in the future. In the early part of the seine season many of the seine fleet from the fishing communities throughout southeast Alaska and Puget Sound came to Hoonah for the "Icy Straits" fishery. While there was no official count, locals recall close to 200 vessels. Many of the seine fleet would anchor out in front of town and others tied up or anchored at the cannery. In this image power blocks can be seen on the booms and diesel power skiffs are stacked on the sterns - an indicator of change in fishing techniques from previous years. Everyone in the region knew who the "Inian Island" fishermen were - the Huna boats, captains and crews. There were two fuel docks, one the Union float at Kane's dock, seen here, and the Standard Oil dock at Hoonah Seafoods, out of the picture to the right. (Circa early 1950's, courtesy Huna Heritage Foundation)

# Preface

This study was commissioned by Glacier Bay Superintendent Tomie Lee out of appreciation for the proud history of the Hoonah seine fishery in the Inian Islands. Although that fishery occurred largely outside the boundary of Glacier Bay National Monument waters during the decades it was active - and hence was outside the scope of the bay-specific commercial fishing history we set out to tell in Part 1 - it played such a critical role in the community life of Hoonah that it needed to be included here, as one can't understand later developments in the regional fisheries without that historical perspective. For those fishermen from Hoonah who participated in the Inian Island fishery - and their families and friends who have revealed in the stories and legends which come to us from 'the Island Fishermen' - this brief history is not intended to be an exhaustive presentation on the subject. Personal histories - those that capture all of the sights, sounds and nuances of a magical time and place - are often best shared first person and live. Capturing such rich histories would make for a unique community-based project, but that was not our intent here. What the author, James Mackovjak - himself an Icy Strait resident and active participant in the Icy Strait fishing industry for the past several decades - was asked to do was to glean information from a variety of historical sources as he researched the much broader history treated in Part 1 of this volume. Relying primarily on published historical sources, the author looked at the Hoonah seine fishery much as it was being perceived and reported by the outside world as it was happening. He enhanced the study by referring to several unpublished sources and did a couple of personal interviews with participants and observers to flesh out the story. But to capture all of the depth and nuance of the history - to tell the story of the Inian Islands fishery - only the Hoonah seiners themselves can tell that story.

Huna Heritage Foundation graciously provided most of the black and white photographs with the exceptions of one provided by the Alaska State Library and one provided by Ken Grant. Ken Grant, a Park Service employee and himself an Inian Island fisherman, provided the photo captions. The National Park

Service is pleased to present this brief history. Any mistakes or omissions are entirely those of the author and park staff who reviewed it. It is our hope that the reader will come away with a greater understanding and appreciation of this important part of regional history.

## Stylistic Note

Throughout this chapter the reader will see two spellings for the village and people who prefer to call themselves Huna Káawu [People of 'Shelter From the North Wind']. Originally called Xuniyaa [Lee of the North Wind] in Tlingit, the village name was transcribed as 'Hoonah' by the first postmaster, and that name persists. The people however prefer to use the term Huna, both for themselves and their village corporation and non-profit.

### Hoonah's Salmon Seine Fleet

"The catching and canning of salmon is far and away Alaska's most important commercial enterprise. ... In terms of value of product, it surpasses all of Alaska's other natural resources and industrial enterprises combined. It would be no exaggeration to say that the salmon industry is the backbone of the entire economy of Alaska."<sup>1</sup> So wrote a U.S. Senate committee in 1956.

For much of Native rural Alaska, however, the committee's words amounted to an understatement. Salmon there were far more than the backbone of the economy. They were an integral component of the culture that developed in this harsh but rich region. Salmon nourished, provided income, and were the subject of much artwork. Fishing for salmon was not just a job, it was a way of life, an occupation that provided individuals with an opportunity to prove their prowess and thus attain status among their peers.

The effort to catch salmon in Alaska is not homogeneous. It is comprised of numerous and diverse fisheries conducted in equally numerous and diverse locations and with a varied array of gear types. Each fishery is in its own way challenging, but some are more so than others. Perhaps the most challenging salmon fishery in Alaska was the purse seine fishery that developed where the marine waters at the north end of southeast Alaska meet the Gulf of Alaska. The fishery provided ample opportunity for reward, provided one could meet the considerable challenge of routinely fishing in waters that, due to tidal conditions, were often just barely fishable. The seine boat captains and crews of Hoonah not only met the challenge, they thrived and came to dominate the fishery.

The object of purse seining is to encircle a school of fish with a specialized net—a "seine"—that can then be closed—"pursed"—at the bottom to keep fish from escaping. Two vessels, a seine boat and seine skiff, are needed. Prior to fishing, the seine is carefully piled on the stern of a seine boat. In making a set, the end of the seine is fastened to a seine skiff, which acts as something of a floating anchor. The seine boat is then run ahead, paying out net as it goes. Floats on the seine's "corkline" and lead weights on its "leadline" keep the net spread vertically. The salmon are either encircled immediately or the seine is kept stretched in a semi-circle and held in this position while

migrating salmon (at least theoretically) move into it. All the while the seine, the seine boat, and the seine skiff drift with the current. After the salmon are encircled the seine is immediately pursed and then brought aboard until the salmon are concentrated in the part of the net known as the "money bag." They are then transferred into the boat's hold using a large heavy-duty dip net (brailer) that can be tripped open at the bottom.

The date purse seining was introduced in Puget Sound is a matter of conjecture, but by 1882 Natives there were catching salmon with small purse seines fished from large canoes.<sup>2</sup> In Southeast Alaska, purse seining began supplanting the simpler practice of beach seining in about 1898.<sup>3</sup> Seiners powered by gasoline engines (5-horsepower "Frisco" Standards) made their debut in Puget Sound in 1903. The first gasoline-powered seiner to fish in Alaska's waters, the *Ruth*, was constructed at the Northwestern Fisheries cannery in Hunter Bay, on Prince of Wales Island, in 1907. The cannery was operated by August Buschmann, who had operated a saltery at Bartlett Cove, in Glacier Bay, in 1899 and 1900. Buschmann's brother, Eigil, began operating the *Ruth* the same year it was built.<sup>4</sup> Power seiners made their first appearance in Icy Strait between 1913 and 1918.<sup>5</sup>

By 1914 seiners were catching more salmon in Alaska than were the infamous fish traps.<sup>6</sup> Government officials at that time, however, had low regard for seining. E. Lester Jones, who investigated Alaska's salmon fisheries for the Bureau of Fisheries in 1914, wrote that, unlike traps, a "purse seine can be moved wherever a fisherman may wish to take it, thus following the fish into the very stream mouths, a most objectionable [but not yet illegal] practice."<sup>7</sup> Furthermore, there was a fish quality issue. Jones wrote that seining could not be recommended as a "desirable method of fishing" because "it does not rank with the trap as a manner in which fresh and wholesome fish are delivered at the canneries." Jones had no doubt "that a fair portion of the fish brought to the canneries unfit for use have been in this condition on account of the rough treatment they received in the hands of the purse-seine fishermen."<sup>8</sup> His observations had merit, but he gave no consideration to the importance of fishing jobs to Alaska's economy, particularly in rural areas. Individual salmon traps at good locations and manned by only one or two watchmen sometimes caught hundreds of thousands of

salmon over the course of a season—far more than any purse seining operation.<sup>9</sup>

At Hoonah, the first salmon cannery was constructed in 1911 by the Hoonah Packing Co. What was known as the Hoonah Cannery began canning operations the following year. It was considered to be one of the best equipped canneries in Alaska: there were four canning lines, and among its employee facilities was a modern dance pavilion. In 1917 the Hoonah Cannery put up what was to date the largest pack ever by any cannery in Alaska—152,505 cases.<sup>10</sup> The primary source of salmon for the Hoonah Cannery was fish traps. In 1912 the company operated four salmon traps, but the number grew steadily, and by 1922 there were 24.<sup>11</sup>

The Hoonah Cannery was shuttered in 1923, and remained so until being purchased in 1934 by the independently-owned Icy Straits Salmon Co. During the interim the Hoonah salmon purse seine fleet developed.

The first Hoonah men to operate power seine boats were Oscar Williams, Philip Reese, and Sam Johnson, Jr., who fished in the early 1920s for the Northwestern Fisheries Co. cannery at Dundas Bay. The men fished almost exclusively in Icy Strait, where in the late 1920s the total seine fleet was comprised of about sixty vessels, only eight of which were from Hoonah. During the 1920s a number of seine boats were built at Hoonah by shipwrights Silas Dalton, Lonnie Houston, and Johnny Lawson. Among those built by Lawson were the *Jericho*, *Victor*, and *Sadie*. Dalton built the *Dorothy*, and later the *Dorothy II*. Lumber for vessel construction was imported from Puget Sound.<sup>12</sup>

Seining in those early days was very hard work. The vessels used were 24 to 28 feet long and were steered from a station located in front of the cabin.<sup>13</sup> Early seines were about 100 fathoms (600 feet) long and laboriously pulled aboard by hand or with the help of a hand-powered winch. Until the advent of outboard motors in the 1930s, seine skiffs were little more than oar-powered rowboats, sometimes with two pairs of oars.<sup>14</sup>

Seine fishermen from Hoonah came to specialize in catching salmon in “the passes”

that connect Icy Strait and Cross Sound and begin about 20 to 25 miles west of Hoonah (see Figure 1). North Passage and North Inian Pass are sections of a channel that lies north of the Inian Islands group and Lemesurier Island. South Passage and South Inian Pass lie south of the islands. Middle Pass separates North and South Inian Islands (see Figure 2). The fishery targeted mostly pink (humpback) and chum (dog) salmon, though some red salmon were targeted as well. Most of the salmon that spawn in the northern half of southeast Alaska pass through these channels. Intercepting them, however, was no easy chore. Tides in the region range in excess of twenty feet, and the current at some locations in the passes can exceed eight knots—faster than some seine boats were able to travel at full speed. Tidal conditions in the passes are exacerbated by the weather: a strong wind pushing against a current could make an area unfishable. Fishing was sometimes hindered by icebergs coming out of Glacier Bay. Icebergs were especially numerous when warm weather coincided with big tides. One area of Middle Pass, because of the turmoil created by the current, eddies, and backwashes, became known as “The Laundry.” Catching salmon in the passes—particularly in The Laundry—required exceptional fishing skill, a depth of local knowledge, a willingness to work very fast and hard, as well as a large dose of boldness.

Hoonah Natives weren't the first commercial fishermen to seine salmon in the passes. The fishery was pioneered in the 1920s by Puget Sound-based Slavonian fishermen (immigrants from the Adriatic coast of Yugoslavia). The Slavonians at the time had larger, more powerful boats than those of the Hoonah fishermen.

A number of Hoonah seine boat captains studied the Slavonians' fishing techniques, and over time very they successfully adapted their more modest operations to the fishery. The first Hoonah seine boat captain to fish in the passes may have been Joe White, on the vessel *Jericho*. Apparently some of the Slavonians encouraged his participation, because they provided him with a suitable seine.<sup>15</sup> Seines used in the passes were heavy-duty, and hung with extra lead and corresponding extra corks. Though sometimes to no avail, additional corks were then added to keep the entire seine from being pulled under the water by the currents. During

<sup>9</sup> The average season's catch for each of the 91 salmon traps that operated in Southeast Alaska in 1911 was 102,649 salmon.





Figure 1: Cross Sound and Icy Strait



Figure 2: Inian Islands

the late 1940s, seines used in the Inian Islands were 300 fathoms (1,800 feet) long, about 15 fathoms (90 feet) deep, and hung with some 1,200 pounds of lead.<sup>16</sup>

Fishermen in the Hoonah fleet gradually developed a profound understanding of how the tides affected the movements of salmon through the passes, and they came to dominate the fishery in the most difficult areas, particularly The Laundry. Among the most successful of Hoonah's early seiners were George Dalton, James Grant, William Johnson, Jimmy Marks, Jimmy Martin, and Joe White. Marks specialized in fishing for red salmon, which were mostly caught along the mainland shore.<sup>B</sup> The prowess of these men and others who followed was a source of great local pride, and their knowledge was passed down to the next generation.

Seining in the passes was structured around the stage of the tide. "Setting" the seine a few moments on either side (before or after) of the "right" time in a given location would likely result in few fish, and possibly a damaged seine and lost fishing time. The right time to set wasn't determined by looking at a tide book and a clock, but by very subtle indicators, such as a change in the amount of foam that waves were leaving on the rocks. By far the most productive fishing in The Laundry and North Inian Pass was during the earliest stages of the flood tide. The best an individual boat could do was to make two sets before the current made fishing impractical. Knowledgeable fishermen, however, were able to fish "round the clock" by proceeding through a series of fishing locations as the tide rose and fell.<sup>17</sup> By necessity, one of these locations was the waters around Three Hill Island, in Cross Sound, where tidal action was comparatively modest. Hoonah seine boats tended to have more crewmen (up to ten) than their competitors (usually six), and thought nothing of making twenty sets in a day, a feat few others could match.<sup>18</sup> At the end of the day, the fishermen who had made the most sets tended to have the most fish.<sup>19</sup>

One particularly noteworthy adaptation of the Hoonah fishermen for successfully catching salmon in the passes was the "hook-off." Hook-offs, in which the seine skiff's end of the seine was fastened to the shore, were useful where productive water deep enough to fish was surrounded by shallow water in which the

bottom of a drifting seine could hang up. Steve Langdon, a University of Alaska anthropologist who did considerable research on this fishery, noted that James Grant of Hoonah, who operated the seine boat *Alberta*, introduced the use of hook-offs in the Inian Islands fishery.<sup>20</sup> In using a hook-off, the crew of the seine skiff would fasten their end of the seine with a quick-release connection (sometimes a special knot) to rope or cable that had been tied around a rock or tree on the shore at a suitable location. Once the set was complete, the quick-release connection would be tripped and the seine skiff would take its end of the running line to the seine boat. Some hook-offs were designed to be used during flood tides, while others were for ebb tides.

Hook-offs were named after the captains of the boats that pioneered them. "Grant's hook-off," for example, was named after James Grant; the "Washington hook-off" was named after George Dalton's boat. The captain who pioneered a hook-off was tacitly accorded an unofficial property right, and other fishermen usually did not use it unless invited. In general, however, there was considerable cooperation, as fishermen took turns at the various hook-offs, with deference given to the pioneering captain.<sup>21</sup>

Hoonah fishermen did not necessarily cooperate with strangers. Fishing wasn't done just at hook-offs, and at times several boats might be jockeying for position in the current as they waited for the right moment to begin setting. The first boat with its net in the water usually caught the most fish, but a stranger who was too aggressive in trying to gain an advantageous position might find himself "corked" by a seine set nearly on top of his. Sometimes a Hoonah vessel would attempt to trick a stranger into setting before the time was right by faking a set and hoping the less-knowledgeable fisherman would make a real one and suffer the consequences.<sup>22</sup>

Due to a record run of pink salmon and the fact that cannery operators gave uncharacteristic preference to seine-caught salmon over those caught in traps, the Natives of southeast Alaska were reported in 1930 to have made more money than in any of the previous fifteen years. A considerable number treated themselves to scenic airplane flights around the region. Native fishermen's earn-

<sup>B</sup> A favored location was a small indentation just west of Pt. Wimbledon that was unofficially known as "Bubbles Bay" (Jumbo James, as related to Wayne Howell)

ings in 1931, in contrast, were very poor, in part because cannery operators reverted to their preference for trap-caught salmon, which was their inclination until the traps were outlawed with Alaska statehood.<sup>23</sup>

At Hoonah, the new owners of the cannery (in 1934) promptly installed new, high-speed canning machinery and began canning operations. The Icy Straits Salmon Co. stood out among southeast Alaska canneries in that it did not operate fish traps, but secured its supply of salmon from independent fishermen. The reason for the lack of fish traps was likely not a matter of preference: The 1925 regulation that required the interval between fish traps north of 58° north latitude—which included Icy Strait and Cross Sound—to be a minimum of 1-1/2 miles made it likely that by 1934 all the productive trap sites were already occupied.<sup>24</sup>

To help build a seine fleet at Hoonah the company purchased about 20 surplus seine boats from a fleet in Puget Sound that was being upgraded. The vessels were sold to Hoonah fishermen, with the best fishermen getting first pick. Among the vessels were the *Alberta*, *Clara*, *Clarice*, *Edna S*, *Frisco*, *Key City*, *Maine*, *Olympic*, *Ralph II*, *Rosario*, and the *Sophie II*.

The following article about the Icy Straits Salmon Co. appeared in a 1936 issue of *Pacific Fisherman*:

An interesting example of the canned salmon industry's contribution to the welfare of Alaska is seen in the fact that the Icy Straits Salmon Co., a relatively small concern operating at Hoonah, during the 1936 season paid out well over \$100,000 in the territory.

Major items of direct expenditure in Alaska, totaling \$65,000, including the following: paid to native fishermen of the Hoonah district, \$34,000; local labor, comprising 75 per cent of all labor employed in the cannery, \$8,500; supplies purchased in Alaska, \$20,000; taxes paid to the territory, about \$4,000. [The expenditures listed total \$66,500]

The Icy Straits Co. made particular efforts to extend opportuni-

ties for employment to the people of its district and thus to benefit the district and the territory materially. Officials of the company express the opinion that the season was a successful one for the fishermen, cannery workers and merchants at Hoonah who, in most instances, were enabled to pay up all their existing liabilities and still have enough for their winter's "grub-stake," which heretofore has been a serious problem for the territory, necessitating provision for a great deal of relief [welfare]. The company feels that its efforts in behalf of the local residents of Hoonah have been fairly successful, and attributes this success directly to the fine cooperation of the residents, fishermen, cannery workers and merchants of that district.

"The company," says Frank Wright, Jr., who participated in the management of the operations, "was particularly fortunate in having the cooperation of some very fine native seiners, whose untiring efforts enabled the company to make a good pack.<sup>c</sup> It also had seven Puget Sound boats fishing for it, these boats returning to the Sound the latter part of August after fishing in other districts of Southeast Alaska."

The records made by the native seine boats *Jericho*, owned by Archie White and captained by Joe White, and the *Dundas*, owned by Oscar Williams and captained by William Johnson, are considered worthy of special mention. The *Jericho* was the high boat of the native fleet, with the *Dundas* a close second. The owners and captains of the other native boats, however, likewise were good fishermen and cooperated to the best of their ability.<sup>25</sup>

The Icy Straits Salmon Co. encouraged competition among its seine boats by posting a weekly tally of the previous week's production by each vessel. In Hoonah, being a captain or crewmember on a highline seine

<sup>c</sup> The Frank Wright, Jr. quoted was not Frank Wright, Jr. of Hoonah.

boat engendered a lot of respect, all the more so if your boat's name was at the top of the production list. Captains and crews fished extra hard to be on top. In addition to the recognition among their peers, the captains and crews made more money, and the cannery got more salmon.<sup>26</sup>

In 1938 the Icy Straits Salmon Co. paid 97 cannery workers a total of \$12,157.09, an average of \$125.33 each. Some 185 fishermen were paid \$34,513.17, an average of \$186.56.<sup>27</sup>

Also in 1938 the Department of the Interior's Office of Indian Affairs (renamed Bureau of Indian Affairs in 1947) began making economic development loans to chartered Indian corporations in Alaska. A provision of the 1934 Indian Reorganization Act had authorized a revolving fund of \$10 million from which the loans would be made. In 1939, in part to take advantage of this program, the Hoonah Indian Association (HIA) was established as a federally recognized tribal association. The HIA received loans, and then lent the money to fishermen for the purchase or upgrades of boats and seines. Power rollers - which used power from a seine vessel's main engine to help pull the seine aboard - had just been developed and were a common upgrade. The loan terms were very generous; repayments were based on success in the current fishing season. Loans for expenditures on boats averaged about \$1500 and on seines from \$800 to \$1500.<sup>28</sup>

The Hoonah seine fleet peaked during the 1930s at about 20 boats. A 1973 history by students in Hoonah noted that in the early years a small cannon was fired to signal the return of the salmon fleet.<sup>29</sup>

The National Park Service's Frank Been visited Hoonah during the canning season in 1940. He reported that about 150 men were working on 19 seine boats that were owned by Hoonah men. Nine or ten seine boats owned by others employed Hoonah men. Each seine boat had a crew of about six. About 60 people from Hoonah were working in the cannery, where they were represented in labor negotiations by the Alaska Native Brotherhood (ANB) and Alaska Native Sisterhood (ANS). Minimum wage at the cannery was 65 cents per hour.<sup>30</sup>

The U.S. Fish & Wildlife Service reported in 1943 that the most successful seine boat in

the three Juneau fisheries regulatory districts was the *Clarice*, which caught 72,000 fish, about four times the average for all seiners in the area. The crew share was \$1085. The *Clarice* was operated by William Johnson, of Hoonah, who fished for the Icy Straits Salmon Co.<sup>31</sup> In a Congressional hearing in 1949, Hoonah's mayor, Harry Douglas, stated that the average earnings of his community's fishermen in 1947 and 1948 was "about \$800."<sup>32</sup>

The last year of operations for the Icy Straits Salmon Co. was 1953, the same year President Eisenhower proclaimed southeast Alaska a disaster area because of a collapse of the salmon run. In 1954 the cannery was leased by the Pelican Packing Co., which used the facility for storage and boat repair.<sup>D 33</sup> Pelican Cold Storage purchased the Icy Straits Salmon Co. outright in 1956.<sup>34</sup> During the 1950s the Hoonah seine fleet stabilized at 12 to 14 boats.<sup>35</sup> They were associated, at least after 1953, with the cannery at Pelican, where a part of town was known as "Little Hoonah."<sup>36</sup>

Van Baker, of Gustavus, was a 16-year old crewmember aboard the seiner *Gony* during the 1954 salmon season. The vessel made one set in front of North Inian Island. Baker recalled soon being drawn into a whirlpool, with the boat and net going in circles. He said the crew could pull the net in while facing one direction, but could barely hold on while facing the other. Once the seine was finally aboard, the captain decided he had had enough of fishing in the passes, and the *Gony* retreated for the remainder of the season to less turbulent waters in Icy Strait. Baker recalled that Native crews had a reputation for hauling gear very fast, and that very few whites could match them. In addition, the whites didn't want to fight the currents and rocks in locations such as The Laundry.<sup>37</sup>

Statehood for Alaska in 1959 brought many changes. The elimination of fish traps was among the most significant. At Pelican the Pelican Packing Co.'s cannery operated for the last time in 1960. The following year the company's salmon were custom canned at the Excursion Inlet Packing Co. (XIP), and in 1962 XIP purchased Pelican Packing Co.'s cannery equipment as well as the mortgages of the Hoonah seine fleet. The sale agreement

<sup>D</sup> Pelican Packing Co. was formerly the Whiz Fish Products Co., which had operated a salmon cannery at Pelican in 1951. Now long defunct, the Pelican Packing Co. was associated with Pelican Cold Storage.

included a no-compete clause. The ban on traps had essentially left XIP without a source of salmon, save the production of five mediocre seine boats.<sup>38</sup> The purchase of the seine fleet mortgages virtually guaranteed that Hoonah fishermen would sell their production to XIP, at least until their mortgages were paid off. Bob Syre, the cannery superintendent, termed the Hoonah fleet “star fishermen.”<sup>39</sup> He had particular respect for Johnny Hinchman, who owned and operated the *Yankee*, *Alice H*, and *Johnny A*. Syre added to the Hoonah fleet by contracting the construction of the seiners *Gypsy Queen*, *Ocean Queen*, and *Vagabond Queen* and the purchase of the *Monitor*.<sup>40</sup> XIP appreciated the quality of the salmon caught in Cross Sound and Icy Strait. The fish were still feeding, and their appearance as well as the quality of their flesh had not yet begun to deteriorate. Although the company could not control where fishing was done, it discouraged fishermen from fishing anywhere except Cross Sound and Icy Strait. The quality of fish from areas such as Frederick Sound simply did not match that of those caught in Cross Sound and Icy Strait.

Despite the concern for quality, salmon throughout Alaska during the 1960s were poorly handled and cared for by fishermen and canneries alike. Salmon were mostly transported in the holds of boats or on open scows. No ice or mechanical refrigeration was used. Well into the 1970s salmon were routinely moved about by using a pew—a 5-foot wooden pole with a sharp curved steel spike at the end (or: similar to a pitchfork, but with one tine). Salmon were supposed to be pewed only in the head, which was discarded in the canning and freezing process, but unloading fish always seems to be a hurried affair, and salmon were commonly pewed in the body, which damaged the flesh that was to be canned or frozen.

With fish traps gone, the number of seine boats increased dramatically. They needed a place to fish, and many chose the Cross Sound and Icy Strait area. As newcomers arrived, some idled by to observe the Hoonah Natives fishing in The Laundry. Few had the nerve to fish there. In 1963 Hoonah fishermen reported that about 200 seine boats had fished in the Inian Islands. An additional 60 to 90 were expected for the 1964 season.<sup>41</sup> The number continued to grow and eventually some 400 seine boats were competing against each other in Cross Sound and Icy Strait. This fleet came to be called

“The Million Dollar Fleet” and all along the waterfronts of Southeast Alaska wherever it was mentioned everyone knew that it referred to the rich seine fishery in the Inian Islands.

For fisheries managers, there are basically two types of salmon fisheries: intercept fisheries and terminal fisheries. In an intercept fishery, mixed stocks of salmon are caught indiscriminately as they migrate toward their respective spawning areas. The fundamental problem with this type of fishery is that the stocks of some spawning areas might be over-harvested, while others are under-harvested. Weak stocks (i.e., small spawning populations) are typically most susceptible to over-harvest in a mixed-stock fishery.

In a terminal fishery, salmon are caught close to where they spawn (i.e., near their natal stream), and managers adjust the fishing effort to ensure adequate reproduction. In southeast Alaska only the larger systems are monitored and individually managed. The region has on the order of 5,000 salmon spawning streams, and most host only small spawning populations. Overall, the salmon fisheries in southeast Alaska are a combination of intercept and terminal fisheries.

The salmon seine fishery in Icy Strait and Cross Sound was an intercept fishery without equal. For fisheries managers, effectively monitoring this fleet—a critically important step in the comprehensive management of the salmon resource in northern southeast Alaska—was a daunting, if not impossible, task. And the intense fishing effort had ramifications throughout northern southeast Alaska. Fishermen in places like Frederick Sound were being starved out because the stocks they relied on were intercepted in Cross Sound and Icy Strait.

The shortage of salmon in inside waters was felt most acutely in Petersburg. Unable to catch sufficient fish on their home grounds, a number of Petersburg fishermen joined the crowd in Icy Strait and Cross Sound. Their catch was tendered to Petersburg in vessels equipped with refrigerated seawater systems, but the distance—some 20 hours of travel—made the situation far from ideal for fishermen or the Petersburg canneries. The “Petersburg Mafia”—Petersburg Fisheries (now Icicle Seafoods) executives and Ernie Haugan, Petersburg’s representative in the State’s legislature—lobbied hard in their own interest to end the salmon seine fisheries in Cross Sound and

Icy Strait, but it was for the aforesaid management rationale that the fishery was terminated in 1974.

It was in a sense ironic that Petersburg Fisheries was so involved in closing the home waters of the Hoonah seine fleet, for it was that fleet that saved a financially teetering Petersburg Fisheries from possible bankruptcy only a decade earlier. Petersburg Fisheries had been formed in 1964 by Petersburg businessmen and fishermen to purchase and operate the former Pacific American Fisheries cannery in Petersburg that had been closed as part of a liquidation process. The 1965 salmon season was very poor throughout southeast Alaska, and the Excursion Inlet cannery closed at the end of the summer. Usually the cannery would stay open to take advantage of a September run of chum salmon in Excursion Inlet, which some years was very considerable. Not long after the cannery crew had left, a great number of chum salmon appeared in the Inlet. The Alaska Department of Fish & Game assessed the run and immediately opened the season. At about 400,000 fish, it was to be the largest fall chum run Excursion Inlet had ever experienced. The Hoonah seine fleet started fishing and Petersburg Fisheries sent every tender it had to purchase the fish. The revenue from canning the fish was enough to keep the company solvent, and today Icicle Seafoods is among Alaska's largest seafood processors.

In all, the salmon seine fishery in the passes lasted only a half century, barely two generations. In the closure of the passes to salmon seining, the Hoonah seine fleet essentially lost the foundation of its proud existence. The wealth of knowledge about catching salmon in this unique location that had accumulated over the years became almost valueless. Although other factors, such as limited entry, were at play, Hoonah's seine fleet gradually fell into disrepair and its numbers dwindled. In 2009 there remain only two Hoonah-based seiners. The prowess of Hoonah seine boat captains and crewmembers at fishing in the passes, however, will always remain an important part of Hoonah's legacy.

## Endnotes

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- <sup>13</sup> "Early Days in Petersburg," *Petersburg Press*, December 25, 1931.
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- <sup>16</sup> Harry Douglas (mayor of Hoonah), in House Special Subcommittee on Alaskan Problems, Committee on Merchant Marine and Fisheries, *Hearing on H.R. 1515, A Bill to Provide for the Gradual Elimination of Salmon Traps in the Waters of Alaska*, Part 2, 81<sup>st</sup> Cong., 1<sup>st</sup> sess., 1949, 363.
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# Photo Gallery

Figure 1: In this image, the crew of the FV *St. Paul*, possibly a Puget Sound boat, hauls its net by hand. Seine fishing was first introduced to the Inian Islands in the 1920s by boats hailing from Puget Sound. A group of Slavonian fishermen who brought seine fishing from the Adriatic Sea to Puget Sound were the first to share the technique with Huna natives, who then adapted it to their environment and came to master the fishery in the Inian Islands. All of the techniques of the fishery are evident in this image. (Circa 1950, courtesy Huna Heritage Foundation)



Figure 2: This picture shows what looks to be a good set in Middle Pass at slack high water. The FV *Key City*, Captain Jim McKinley, is brailing fish from the "fish bag," also called the "money bag." The turn table has a small roller which suggests the boat was operated mainly by hand power. The light rigging, lack of power blocks, presence of Spanish corks (true cork, later replaced by synthetic materials) and non-motorized double ender skiff all suggest fairly early date for this picture. The presence of the anchor in the stern of the skiff suggests they had used a hook-off for this set. The Middle Pass, high-water-slack- set was a very competitive and difficult set which only the Huna fishermen mastered. (Circa 1940, courtesy Huna Heritage Foundation)



Figure 3: The Marks brothers, Willie and Jim, had a hook-off site between Fern Harbor and "Bubbles Bay." Jim Marks captained the FV *Evolution*, seen here. In this very peaceful photo the crew appears to be taking a break in action during a haul – the turn table had been turned at the start of the haul, the seine has been pursed and the skiff crew is already aboard and the the purse rings are on deck. The corks that were pulled by hand and stacked on the stern have been dumped back into the water, and it appears that the operation of pulling seine and stacking it on the turn table is about to begin. The fish are still in the water, soon to be brailled in the "money bag." In the far right background another boat, probably the FV *New Annie*, captained Willie Marks, can be seen. Both seine vessels were crewed primarily by family which was true for most of the seiners from Hoonah. (Circa 1950, courtesy of Huna Heritage Foundation)



Figure 4: The *New Annie* owned and operated by the Marks family is at anchor and most likely waiting for the right tide for their hook-off. This hook-off site was well known for the percentage of sockeye salmon caught. (Circa 1950's, courtesy Huna Heritage Foundation)



Figure 5: The crew of the FV *Clarice*, Captain William Johnson, is hauling in the net. As the purse is drawn in the net, the corkline would be hand pulled by the "skiffmen" and stacked into the skiff's hull, seen here, as well as on the stern of the main boat, which we are seeing in the photo. When the pursing was complete and all of the rings were hauled on deck, the corkline was then dumped overboard. It was important to do all of this in an orderly fashion, but as often times happened, some part of the net would snag on the propeller or rudder shoe of the boat, in which case a crewman would take the plunger – the thin pole sticking out from the stern of the boat – to un-snag the net before hauling could proceed. (Circa 1940's, courtesy Huna Heritage Foundation)



Figure 6: A group of salmon seine boats are rafted together in front of town. There are men and women aboard and many of the people have on dress clothes and one boat flies the American flag, suggesting a holiday gathering. Given the amount of snow on the mountains in the background it was likely a Memorial Day gathering, a popular annual event in Hoonah. The presence of the American flag indicates a common practice, as the Huna Tlingit were loyal Americans and many served in the armed forces. Five of the vessels have turn tables with rollers on their sterns, and the skiffs include both the old oar powered double-enders as well as one newer skiff with a gas motor, a real step up from hand power. (Circa 1930's-early 1940's, courtesy Alaska State Library, PCA 222-302, Leslie Melvin collection)



Figure 7: The FV *Alberta*, Captain James Grant, rafted to the *Sunbeam* at the small boat harbor known as the City Float in Juneau. The Juneau Cold Storage building is visible in the background. Grant's Point hook-off, also called Alberta's hook-off, was named after James Grant who was among the early Inian Island fisherman. Captain Grant spoke only Tlingit and didn't use a tide book to fish the complex and unforgiving tidewaters of Inian Islands. He also took the *Alberta* to the Puget Sound to fish. (Circa 1940-50, courtesy Ken Grant)



Figure 8: The FV *Tahola*, Captain John G. Fawcett, Sr., tied alongside the float at Kane's dock. The 55 gallon drum at the front of the cabin is fuel for the power skiff. The long stack in the bow is from the galley stove below. Many of the fishing boats during that time had their galleys forward in the forecabin (foc'sle). (Circa 1940-50's, courtesy Huna Heritage Foundation)



Figure 9: Things didn't always go as planned. In this image we see a disaster unfolding at the cannery floats. The FV *Maine* has "swamped." The turn-table is missing – perhaps floated away – and hatch is open. No fish can be seen in the fish hold. The FV *Tahola* is coming alongside to assist. (Circa 1940-50, courtesy Huna Heritage Foundation)



Figure 10: The FV *Sapho* is tied along-side the fish elevator float. This is where the local kids would come to watch the fleet, and many young men can recall standing on the dock above watching their fathers, uncles, and grandfathers unload fish. This is where many young men got their entry into the seine fishery – young boys envied their older brother who had risen to the level of "bull cook," the chief dish washer and go-fer. The official title was "bull." To move the fish from the boat to the processor, the fish were pitched with a fish pew (a single-tined pitch fork) from the fish hold to the deck while others on deck pitched to the fish elevator, which lifted them to the dock level above. The salmon were separated and tallied by species, as each had different prices, but the set price was per salmon regardless of size or weight. (Late 1940's or early 1950's, courtesy of Huna Heritage Foundation)



Fig. 11 - During the pre-season many Hoonah families used their seine boats for subsistence. This photo would have been taken in April, as hemlock branches with herring eggs can be seen stacked on the turn tables of both boats. At this time of year the bulky seine nets were not yet on the boats, as many would still hanging in the web house at the cannery while others were being repaired. The turn tables on these boats were state of the art for the time. Turn tables were a revolving platform on the aft deck, and worked much like a "lazy Susan." The seine net would be stacked on the turn tables, which would be oriented aft during net deployment then pivoted to the side for the haul. The turn tables in this image were called "power rollers with center drive." In the older system of turn table the roller was driven by a v-belt from the deck winch to a shaft and universal joints to the roller on the turn table. Many a crewman has a story of lining up the "u joint" with the roller as the turn table was quickly turned while making a round haul in "The Laundry." A double-ended rowing skiff can be seen tied along side. The "double-enders" were more efficient than the older skiffs, as they caused less drag in the water and were also ideal for hand trolling. Local shipwrights built these wooden skiffs, now a lost art. (Circa 1950's, courtesy of Huna Heritage Foundation)



Figure 12: A "deck load" of salmon is being off-loaded. Here Karl Greenwald (left) uses a fish pew to pitch salmon from the fish hold up onto the deck. From the deck Louie Halverson (center) pitches them over to the fish tender. In the foreground Johnny Lawson is repairing a ripped net along the lead line. (Circa 1949, courtesy Huna Heritage Foundation)



Figure 13: The FV *Karen Jean*, Captain Joe White, is hauling in the seine "outside the island" off Middle Pass at the Inian Islands, while the *Sea Ranger* tows his net nearby. Taylor Island can be seen in the background. White is reported to have never looked at a tide table, yet he intimately knew and mastered the tides at the Inian Islands. (Circa 1960's, courtesy Huna Heritage Foundation)



Figure 14: A crew hauls the net during "brailing." The "brailer" was a bag for transferring the fish from the seine to the hold. Each crewman had a station with specific duties. The man on the left is pulling the brailer line forward while the other two men – one on deck and one in the power skiff – are rolling the fish into the brailer. The man on the stern is shoving the brailer handle forward to scoop up the fish. Unseen is the "winchman" who coordinates with the "deckmen" pulling up on the brailer line until someone yells, "take 'er away!" Visible above the stern railing is the ring bar – an innovation that helped the crew organize different gear components around the deck. (Circa late 1950's-1960's, courtesy Huna Heritage Foundation)



Figure 15: "Take it away!" The winchman would hoist the brailer over the fish hold, where the "brailerman" on the stern would release the fish into the hold. Lots of cheers! The sight of a brailer being hauled up caused a thump in the hearts of all crewmen watching. If your boat was brailing, there was no doubt all other crews nearby were counting the haul with envy. The more efficient brailermen got their nets in the water faster and hauled more fish. The ring bar, the "spongex" corks on the corkline and the aluminum brailer date this image. (Circa late 1950-early 1960's, courtesy Huna Heritage Foundation)



Figure 16: It must have been a hard week of fishing as no one can be seen on any of the boats or the floats in this image. If it had been pre-season the scene would have been a hive of activity, as it was an unwritten duty for crewmen to scrape, sand, and paint the boat and to re-hang the seine net. This meant you were hired. When in port the fish hold and decks were thoroughly scrubbed and disinfected. The cooks also took pride in having a clean orderly galley. The engineers kept the main engine polished, oiled, and shafts greased. The same held for the skiff man. Many of the non-Hoonah boats comingled with the local boats and maintained a mutual respect while in port, but out on the fishing grounds, competition was fierce. In this image no limited entry permit numbers can be seen



on any of the seine boats nor the smaller pleasure cruisers and skiffs, which were used for hand trolling for salmon. Limited entry came about when the Alaska Legislature passed the Limited Entry Act in 1973. That act forever changed the fortunes of the Huna seine fleet. (Circa 1960's, courtesy of Huna Heritage Foundation)



Figure 17: Repairing the net during weekend lay-ups was the job of the crew, who took great pride in the condition of their boats and nets. Comradery and teamwork was shared among the Huna boats and crews. During those years seining was the only way of life the seine crews. In this image the crew of the Vagabond Queen work in unison at a common task. (Circa late 1960's-early 1970's, courtesy Huna Heritage Foundation)



Figure 18: All crewmen were expected to become experts in repairing nets and everybody was expected to participate. This meant sewing up rips and patching larger holes. But when the nets were tended to, there was other fishing to be done. The 50-gallon drum on the float was probably outboard fuel storage staged on the float for hand trolling. Many seine crewmen owned smaller boats and supplemented their seining incomes by hand trolling in the early morning hours and during seine closures. No limited entry numbers can be seen on any boats. Limited entry (Circa late 1960's, courtesy Huna Heritage Foundation)



Figure 19: The *Patricia Mae*, *Ocean Queen*, *Mermaid* (?), *Alberta*, and *Alert* (?) sit idle at the cannery. Halibut bait sheds on the aft decks indicate the boats are in from halibut fishing before the start of the seine season. Many captains and crew had to rely on halibut fishing to help make ends meet. The building seen in the far right is the "web house" which burned up in the early 1970's. The boats appear to have been freshly painted, most likely over the winter at the company shipyard in Seattle. Many captains took select crewmembers to Seattle in the spring to paint the boats and bring supplies north for the coming season. (Circa 1960-70, courtesy Huna Heritage Foundation)







**“If people want both to preserve the sea and extract the full benefit from it, they must now moderate their demands and structure them. They must put aside ideas of the sea’s immensity and power, and instead take stewardship of the ocean, with all the privileges and responsibilities that implies.”**

**—The Economist, 1998**

