

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[REG-107722-00]

RIN 1545-AY22

**Corporate Estimated Tax**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document cancels a public hearing on proposed regulations and withdraws proposed regulations relating to corporate estimated taxes.

**DATES:** The public hearing originally scheduled for March 15, 2006, at 10 a.m., is cancelled.

**FOR FURTHER INFORMATION CONTACT:**

Robin R. Jones of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622-7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of public hearing that appeared in the *Federal Register* on Monday, December 12, 2005 (70 FR 73393) announced that a public hearing was scheduled for March 15, 2006, at 10 a.m., in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under sections 6425 and 6655 of the Internal Revenue Code.

The public comment period for these regulations expired on February 22, 2006.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, February 28, 2006, no one has requested to speak. Therefore, the public hearing scheduled for March 15, 2006, is cancelled.

**LaNita VanDyke,**

*Federal Register Liaison Officer, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

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**DEPARTMENT OF THE INTERIOR****National Park Service****36 CFR Part 13**

RIN 1024-AD25

**Glacier Bay National Park, Vessel Management Plan Regulations**

**AGENCY:** National Park Service, Interior

**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service (NPS) is proposing this rule to more effectively manage motor vessel use in Glacier Bay National Park and Preserve. It proposes to revise existing regulations regarding vessel quotas and operating requirements for five types of motor vessels—cruise ships, tour vessels, charter vessels, private vessels, and passenger ferries—within Glacier Bay National Park and Preserve. This rule is proposed in conjunction with the Final Environmental Impact Statement (FEIS) and the Record of Decision (ROD) for Vessel Quotas and Operating Requirements in Glacier Bay National Park and Preserve, completed in October and November 2003, respectively, and implements decisions made in the ROD.

**DATES:** Comments must be received by May 2, 2006.

**ADDRESSES:** You may submit your comments, identified by Regulatory Information Number (RIN) 1024-AD25, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail NPS at: [akro\\_regulations@nps.gov](mailto:akro_regulations@nps.gov). Use RIN 1024-AD25 in the subject line.
- Mail: Superintendent, Proposed Vessel Management Plan Regulations Comment, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826.
- Hand Delivery/Courier: Superintendent, Glacier Bay National Park and Preserve Headquarters Office at Bartlett Cove. Clearly identify the delivery as Proposed Vessel Management Plan Regulations Comments.

All submissions received must include the agency name and RIN. For additional information see “Public Participation” under **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** Tomie Patrick Lee, Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826, Telephone: (907) 697-2230.

**SUPPLEMENTARY INFORMATION:** Glacier Bay National Park and Preserve is

located in southeast Alaska, approximately 65 miles west of Juneau. Accessible by boat and airplane, it is a popular destination due to its spectacular scenery, tidewater glaciers, wilderness, and wildlife. In this document the term “Glacier Bay” generally refers to the bay proper rather than the entire park and preserve.

**History of Glacier Bay National Park and Preserve**

Glacier Bay National Monument was established by presidential proclamation dated February 26, 1925 (No. 1733, 43 Stat. 1988). The monument was expanded by a second presidential proclamation on April 18, 1939 (No. 2330, 53 Stat. 2534). The expanded monument added adjacent lands, including glaciers and geologic features of scientific interest, and the marine waters of all of Glacier Bay; portions of other waters outside Glacier Bay proper; and Pacific coastal waters to a distance of three miles seaward between Cape Spencer in the south and Sea Otter Creek, north of Cape Fairweather.

The Alaska National Interest Lands Conservation Act (ANILCA), enacted in 1980, expanded the 2.8-million-acre Glacier Bay National Monument to 3.3 million acres and redesignated this area as Glacier Bay National Park and Preserve (16 U.S.C 410-1, 94 Stat. 2382). The new park and preserve included all lands and waters of the previously existing monument.

Under proclamations that established Glacier Bay as a national monument, the NPS Organic Act and its amendments (16 U.S.C 1, *et seq.*) governed the management of the former Glacier Bay National Monument. Along with ANILCA and several additional statutory provisions enacted by Congress, they continue to govern the present Glacier Bay National Park and Preserve. The NPS Organic Act of 1916 directs the Secretary of the Interior and the NPS to manage national parks and monuments to “conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” 16 U.S.C. 1. In addition, the Redwood National Park Act of 1978 (amending the General Authorities Act) states: “The authorization of activities shall be construed and the protection, management and administration of [NPS areas] shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various

areas have been established, except as may have been or shall be directly and specifically provided by Congress.” 16 U.S.C. 1a–1. The NPS Organic Act also grants the Secretary of the Interior the authority to implement “rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and reservations under the jurisdiction of the National Park Service.” 16 U.S.C. 3. In addition to general regulatory authority, the NPS has been delegated specific authority to “[p]romulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System, including waters subject to the jurisdiction of the United States \* \* \*.” 16 U.S.C. 1a–2(h). None of the actions in this proposed rule are intended to preclude vessel management actions for safety, resource protection, or other reasons pursuant to applicable regulations.

#### Vessel Management in Glacier Bay

Measures to address vessel traffic in Glacier Bay were first implemented in 1979 to respond to concerns regarding the effects of motor vessels on the endangered humpback whale. Regulations went into effect in 1980, influenced largely by the alternatives included in a 1979 biological opinion issued by the National Marine Fisheries Service (NMFS, now known as NOAA Fisheries) in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The opinion concluded that a continued increase in the amount of vessel traffic, particularly charter/pleasure craft, in Glacier Bay was likely to jeopardize the continued existence of the humpback whales in southeast Alaska.

The NMFS issued another biological opinion in 1983 concerning the regulation of vessel traffic and resultant interactions with humpback whales in Glacier Bay National Park and Preserve. This opinion was prepared in response to a request from NPS to reinstate section 7 consultation for the endangered humpback whale in Glacier Bay. This opinion considered the impacts to humpback whales from existing levels of vessel traffic and from the effects of proposed increases in the levels of vessel traffic in Glacier Bay. The opinion concluded that existing traffic, as well as some additional increase in vessel traffic, could occur in Glacier Bay without jeopardizing the southeast Alaska stock of humpback whales. This determination was based on the ability of NPS to monitor and control both the amount of vessel traffic and the operation of vessels in Glacier

Bay. NMFS also recommended vessel operating restrictions and a rationale for regulating vessel entries into Glacier Bay. The agency recommended that any vessel increases be contingent on monitoring studies of whale presence, noise levels, and prey showing no adverse effects. The opinion stated: (1) “no additional vessel traffic should be allowed unless the number of individual whales that enter Glacier Bay remains equal to or is greater than the 1982 level” (22 whales were observed between June 1 through August 31, 1982) and (2) “a minimum of two years should be allowed for monitoring and evaluating the effects of such an increase before additional increases are proposed.”

Additional vessel regulations were subsequently promulgated in 1985. Consistent with the recommendations in the NMFS 1983 biological opinion, these regulations allowed for up to a 20 percent increase in vessel quotas above the 1976 level for large ship and small motor vessel classes. The NPS implemented increases in two increments, and the 20 percent increase was reached in 1988. Since these regulations were promulgated, concerns have broadened to encompass potential effects on other biota, the physical environment, and visitor experience.

In 1993 NMFS issued another biological opinion—based on a review of a 1992 draft NPS proposal for vessel management in Glacier Bay, available data, and previous biological opinions—addressing the effects of vessel traffic in Glacier Bay on the threatened Steller sea lion, the endangered gray whale, and the endangered North Pacific population of humpback whales. NMFS concluded that the level of activity described in the 1992 draft NPS proposal would not jeopardize the continued existence and recovery of any threatened or endangered species. Nonetheless, due to concern about the decline in humpback whale use of Glacier Bay, NMFS, in its opinion, “urged the NPS to take a conservative approach in all management actions that may affect humpback whales” and recommended that NPS “implement a humpback whale feeding ecology research program” and “continue humpback whale monitoring programs that identify the number of humpback whales that feed in the National Park waters, and their individual identity, age, reproductive status, and length of stays.”

Based on the park’s management objectives from the 1984 General Management Plan and the 1993 NMFS opinion, the NPS completed a 1996 Vessel Management Plan (VMP)/revised

environmental assessment (EA) and issued a finding of no significant impact (FONSI) regarding vessel quotas and operating requirements. The NPS decision regarding vessel management provided for increases in quotas for cruise ships, charter vessels, and private vessels in Glacier Bay. With respect to cruise ships, it allowed for 139 cruise ships throughout the June through August season, with potential for incremental increases to 184 ships (*i.e.*, up to two cruise ships per day during the 3-month season), based on scientific and other information and applicable authorities. Regulations adopting the VMP vessel quotas became effective in May 1996. Based in part on recommendations in the 1993 biological opinion, research and monitoring were initiated to better understand the effects of motor vessels on park resources and values.

Subsequent legislation affecting Glacier Bay National Park and Preserve included the Omnibus Parks and Public Lands Management Act of 1996 (Pub. L. 104–333). Section 703 of this Act directed NPS to not impose additional operating conditions in the areas of air, water, and oil pollution beyond those determined and enforced by appropriate regulatory agencies. Operating conditions or limitations relating to noise abatement can be imposed only when the Secretary determines it necessary to protect park values and resources. However, when competitively awarding concession contracts to enter Glacier Bay, the relative impact particular concessioners will have on park values and resources are considered in determining which are the best proposals.

In a May 1997 complaint filed in the U.S. District Court, the National Parks Conservation Association (NPCA) challenged the validity of the NPS 1996 VMP/revised EA and FONSI. The District Court upheld the decision made by the NPS. However, the U.S. Court of Appeals for the Ninth Circuit subsequently determined that the portion of the VMP/EA and the 1996 implementing regulations that authorized an increase in vessels into Glacier Bay violated the National Environmental Policy Act of 1969 (Pub. L. 91–190, hereafter NEPA) because an environmental impact statement (EIS) had not been prepared. The court prohibited vessel traffic above the pre-1996 levels unless an EIS was prepared. The court decision went into effect in late summer 2001. Following this decision, the Congress, as part of the U.S. Department of the Interior Appropriations Act of 2002 (Pub. L. 107–63, section 130), required NPS to:

(1) Prepare an EIS by January 1, 2004, to identify and analyze the possible effects of the 1996 increases; and (2) set the maximum level of vessel entries into Glacier Bay based on the analysis in the EIS. Until the maximum level of vessel entries is set based on the new EIS, the Act provided that the number of vessel entries into the park would be the same as in effect during the 2000 calendar year, and that the NPS decision and final rule, issued in 1996, relating to vessel entries were approved and would be in effect, notwithstanding any other provision of law. On January 18, 2002, the U.S. District Court modified the previous injunction accordingly.

### The Draft and Final Environmental Impact Statements

In addressing the requirements of section 130 and pursuant to NEPA, the NPS prepared a draft EIS (DEIS) and final EIS (FEIS) and approved a Record of Decision (ROD) on November 21, 2003. The DEIS described and evaluated the environmental effects of a no action alternative and four action alternatives for managing motorized vessels within Glacier Bay and Dundas Bay. Based on comments received during the public comment period and additional NPS considerations, modifications were made in the FEIS. These documents are discussed in more depth below under "Compliance with Other Laws."

### Description of the Proposed Rule

Regulations concerning vessel quotas and operating requirements for cruise ships and tour, charter and private vessels have been in effect and enforced by NPS for many years. Many of these regulations regarding vessel management are being retained consistent with the ROD. New elements and a number of adjustments to the current regulations are included in this proposed rule:

- Establishing two separate seasonal vessel quota periods for cruise ships. First, for May and September establish an initial quota of 92 cruise ships with potential to increase to 122. Second, for June 1–August 31 re-establish an initial quota of 139 cruise ships with potential for incremental increases to 184 as under the 1996 regulations;
- Eliminating two private vessel seasonal categories—total entries and total vessel use days—thus increasing the total number of private vessels allowed in a season;
- Adding a passenger ferry category to Bartlett Cove with a year-round daily vessel quota of one, in accordance with section 127 of P.L. 105–83 (Nov. 14, 1997);

- Modifying the definitions for cruise ship, charter, and tour vessels;
- Adding a definition for a passenger ferry;
- Closing the waters at Beardslee Entrance and the entrance to Adams Inlet in Glacier Bay to cruise ships and tour vessels;
- Eliminating the permit exemption for private vessels based in Bartlett Cove;
- Relaxing existing private vessel orientation requirements;
- Modifying the annual determination of the cruise ship quota to provide flexibility concerning timeframes to meet cruise ship industry needs;
- Increasing the 10 knot maximum speed limit in whale waters to 13 knots;
- Reducing the number of areas pre-designated as whale waters;
- Extending the seasonal speed limit in the lower bay whale waters to September 30; and
- Conforming subsection (b) to the existing question and answer format of subsection (a).

### Section-by-Section Analysis

#### Section 13.65(b)(1) Definitions

The following changes are proposed for the Definitions:

- The term "charter vessel" would be amended to include certain uninspected vessels measuring over 100 tons under the U.S. Tonnage "Simplified Measurement System." Vessels under this class would not be any larger than vessels currently allowed under the existing 100 gross ton U.S. or 2,000 gross ton ITC limits due to the idiosyncrasies of the various measurement systems. Though USCG regulations do not set an upper limit for the tonnage of these vessels, the NPS proposes implementing an upper limit of 200 tons, as well as a specific length limit [note that the length limit is already an element of the USCG regulations controlling which vessel can use the simplified measurement system], as a safeguard against vessels qualifying under this subcategory which are larger than otherwise allowed under the existing regulations. Dropped from the definition of charter vessel would be the existing requirement that it be available for hire on an unscheduled basis, as well as the related exception to that requirement—allowing scheduled camper or kayak drop off service. Under the 1996 definitions charter vessels were required to operate on an "unscheduled" basis. This was unrealistic because, as a practical matter, many charter operators schedule trips well in advance of the season. The

new definition is more easily applied to the charter fleet. To eliminate overlap between the charter vessel and tour vessel definitions, passenger carrying capacity would be adopted as the primary criteria separating these use categories. This change in the GLBA definition was proposed by several of our charter operators and park staff during the scoping process for the Vessel Quota and Operating Requirements EIS. The ROD defines charter vessel as certificated "\* \* \* to carry up to twelve passengers overnight or up to 49 passengers for daytime use \* \* \*." The proposed definition changes the word "or" to "and" resulting in: "\* \* \* rated to carry no more than 12 passengers overnight and no more than 49 passengers for daytime use \* \* \*." To more clearly convey the intent: if a vessel is licensed to carry more than twelve overnight passengers, it could not be a charter vessel and if a vessel is licensed to carry more than 49 day use passengers, it could not be a charter vessel.

- The term "cruise ship" would be revised to include only vessels certificated to carry over 12 passengers. Without this provision, a vessel with 12 or fewer passengers of 100–200 gross tonnage under the U.S. Tonnage "Simplified Measurement System" could be either a charter vessel or cruise ship. This would eliminate overlap with the new U.S. Coast Guard 200 ton uninspected class.

- Because the "seasonal entry quota" would be eliminated and the term "entry" would no longer be mentioned in this proposed rule, the term "entry" would no longer need to be defined and would be eliminated.

- A revised definition of "Glacier Bay" would include precise geographic coordinates for Point Gustavus and Point Carolus as the entrance to Glacier Bay.

- A new vessel type—"passenger ferry"—would be added in recognition of the Juneau to Bartlett Cove service authorized in Public Law 105–83, section 127.

- To provide clarity, the definition for each of the following terms would be revised slightly: "commercial fishing vessel," "speed through the water," and "private vessel."

- The definition of "tour vessel" would be changed to provide a clear distinction from the definition of "charter vessel," and to ensure that all commercial passenger-carrying vessels less than 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) could be categorized into the appropriate vessel type.

- The term “pursue” would be deleted from the regulatory language in (b)(1) and a description of the prohibited action instead would be incorporated into proposed paragraph (b)(3)(i). Including a description of the proposed prohibited activity would clarify the proposed regulation.

- The terms “daily vessel quota” and “seasonal vessel quota” would be added to clarify how vessel quotas would be applied to vessel use in Glacier Bay.

- The terms “vessel-use day” and “operate” would no longer be used and would be deleted from the regulation.

All other definitions would remain unchanged.

#### *Section 13.65(b)(2) Permits*

Paragraph (b)(2)(i), “Private vessel permits and conditions” would modify the existing requirement for operators of private vessels (see 36 CFR 1.4) to report to the Bartlett Cove Ranger Station for a boater orientation each time they enter Glacier Bay from June 1 through August 31. Instead, while operators of private vessels would still be required to report that they are entering or exiting Glacier Bay, they would only be required to come to Bartlett Cove for a full boater orientation at the beginning of their initial trip into Glacier Bay for that permit season. This paragraph would simplify the procedure at proposed paragraph (b)(2)(i)(B): From May 1 through September 30, operators must immediately notify the Bartlett Cove Ranger Station of the vessel’s entry or exit into Glacier Bay. The notification can be accomplished by radio or phone, allowing the NPS to update operators about existing or special conditions or operating requirements.

Paragraph (b)(2)(ii), “Commercial vessel permits and conditions,” would clarify that a cruise ship is required to have a concession contract, and tour, charter and passenger ferry vessels are required to have a concession authorization to operate in Glacier Bay National Park and Preserve. This paragraph also will establish the operational requirement for the passenger ferry to travel a direct route to Bartlett Cove, except as necessary for safety considerations.

The proposed rule would extend the closure area for cruise ships and tour vessels to the entrance of Adams Inlet and Beardslee Entrance prohibiting these two vessel types from operating in these two locations. Glacial rebound and silting from the Casement Glacier have caused Adams Inlet to become very shallow and unsafe. Extending the closure would reduce the risk of large-vessel accidents in these two areas. The restrictions in the Beardslee Entrance

are due to its narrow configuration which poses a hazardous area for large vessels, as well as its proximity to the ecologically sensitive Beardslee Islands. Historically, no cruise ships use the Beardslee Entrance to travel within Glacier Bay. Large vessels would have difficulty maneuvering the 90-degree turn, which is required to safely navigate the one (1) nautical mile passage between Strawberry Island and the Beardslee Islands. Additionally, opposing currents and shallow shelves add to the difficulty in maneuvering larger vessels through this area. Harbor seals, whose populations have recently declined precipitously, haul out on the Spider Island complex, Flapjack, and Eider Islands, all within the Beardslee Island complex. These populations are extremely sensitive to disturbance created by large vessel noise, wakes, and presence of vessels and people. A vessel grounding in the entrance could cause catastrophic damage to wildlife within the pristine and protected waters of the Beardslee Islands.

Paragraph (b)(2)(iii), “Exceptions from vessel permit requirements” would clarify the exception for operation of a motor vessel in certain Bartlett Cove waters. The proposed rule would drop the exemption for private vessels “based in Bartlett Cove” from the requirement to obtain a vessel permit when traveling directly between Bartlett Cove and the mouth of Glacier Bay. This exception provides insufficient management of vessel traffic through the designated lower bay whale waters. A portion of the daily private vessel quota would be reserved and made available 48 hours before the date for which the permit would be issued to equitably accommodate the varied needs of visitors and area residents. The park places a high value on providing access for local users and those who travel with limited advanced destination planning. The NPS also considered providing an exception to operating requirements when necessary to avoid an immediate threat to passenger or vessel safety. Deviations may be necessary for legitimate safety reasons but these circumstances do not require a new regulatory exception. (See 36 CFR 1.2.)

Paragraph (b)(2)(iii) also adds “non-commercial” to the exception for vessels engaged in official business of the state or federal government. This clarifies that Alaska Marine Highway System ferry vessels are not covered by this exception. These vessels are engaged in commercial operations, *i.e.*, the transport of passengers for hire.

In paragraph (b)(2)(v), “Restrictions on vessel entry,” the proposed limits on

vessels in Glacier Bay will be implemented by a daily and seasonal vessel quota replacing “Allowable vessel use days per day,” “Total entries allowed,” and “Total vessel use days allowed.” This will help simplify by using one term—quota—and by reducing the three categories to two categories.

For cruise ships, the table would establish two separate seasonal vessel quota periods—for the months of May and September an initial combined quota of 92 cruise ships with the potential to increase to 122, and for June 1–August 31, continue with an initial quota of 139 cruise ships with the potential to increase to 184. The May and September seasonal vessel quota is based on the known presence of humpback whales in Glacier Bay during this time period and is proportionally the same as the initial June 1–August 31 seasonal vessel quota. The table establishes an upper end quota level to which the seasonal vessel quotas for cruise ships could be increased by the superintendent based on stated criteria found in (b)(2)(v)(A), (B), and (C) of this rule.

The seasonal limits on charter vessel entries would be eliminated to better serve public demand and reduce the complexity of the program. The daily charter vessel quota would remain at six.

Limits on seasonal private vessel total entries and total vessel use days allowed would be eliminated. The daily vessel quota would remain at 25. This better serves public demand by reducing the complexity of the program and potentially increasing the number of private vessels from the current 1,971 to 2,300. This would also end the problematic practice of “apportioning” entries to ensure late season visitors may still enter Glacier Bay and allows flexibility to give short-notice permits to private vessels, particularly those based in Bartlett Cove.

Passenger ferry entries to Bartlett Cove, in accordance with section 127 of Public Law 105–83, are set at a year-round daily vessel quota of one.

Paragraph (b)(2) (B) has been modified for clarity and the time frames previously listed have been eliminated. This allows the Superintendent the flexibility to make cruise ship quota determinations approximately 18 months in advance of a cruise ship season. This time frame is in recognition of the cruise ship industry’s need for advance planning. The proposed change also ensures that public comment is accepted prior to a determination. Current regulation provides for public comment after publication in the

**Federal Register** of the Superintendent's recommendation for an increase. The proposed change provides clarity on how the public comment process will occur.

*Section 13.65(b)(3) Operating Restrictions*

The proposed regulations would discontinue the whale waters designation and restrictions at three of the four areas in Glacier Bay—Whidbey Passage, East Arm Entrance and Russell Island Passage. The lower bay whale waters are the only location where a permanent designation of whale waters is necessary and practical. Whale water protections currently in place there from May 15 through August 31 [(3)(iv)(A)(1)] would be extended through September 30 in the proposed rule. Experience since 1996 has shown that designating whale waters in other areas where whales are not present is not effective and it makes the system overly complicated for visitors of Glacier Bay. Protection of the areas formerly designated as whale waters would be accomplished via the superintendent's authority to designate temporary whale waters when whales are found to be gathering and staying for several days in a particular location.

The existing regulations restrict vessel speed in lower bay whale waters to twenty (20) knots speed through the water and, when designated due to the presence of whales, ten (10) knots speed through the water. The proposed regulations would increase the speed limit, when designated due to the presence of whales, from ten (10) to thirteen (13) knots speed through the water. The best available information indicates that speeds of 14 knots or more are likely to lead to whale fatality in the event of a whale-vessel collision, particularly for vessels 80 meters (262 feet) or more in length. See Laist, D. W., A. R. Knowlton, J. G. Mead, A. S. Collet and M. Podesta, *Collisions between Ships and Whales. Marine Mammal Science*, 17(1): 35–75 (2001). The Superintendent may impose the new speed limit of thirteen (13) knots in any area designated as whale waters for all vessels, or may limit the imposition to vessels of a certain size or type depending upon the number of whales estimated to be present, frequency of vessel traffic, underwater topography and other relevant factors. Based on the scientific data gathered over the past decade of monitoring, (see NOAA Biological Opinion dated August 5, 2003, FEIS, Appendix K, p. 45) the NPS does not believe that increasing the speed allowed in whale waters from 10 to 13 knots will have any negative

consequences for whales or other wildlife. The public notice is proposed to follow existing public notice procedures found in 36 CFR 1.7. The current regulation which provides for submission to the U.S. Coast Guard for publication is dated, as much of this information is now provided electronically. The procedures in 36 CFR 1.7 provide better flexibility to meet the need to properly inform park visitors.

The fuel dock regulation, (b)(4)(ii)(F), would be revised by adding Superintendent discretion to authorize other uses to protect park resources or public safety. This would cover the rare instances when a vessel is unable to dock at the public dock but could dock safely at the fuel dock. The park does not believe this would be a frequent occurrence, as these two docks were constructed, to separate general vessel docking from hazardous fueling activities.

Current paragraph (b)(3)(ix) would be revised by removing sub-paragraphs (A) and (B), which are redundant, and redesignating without change the remainder as paragraph (b)(4) under the new heading "What are the rules for using Bartlett Cove waters and docks."

*Section 13.65(b)(4) Bartlett Cove*

As noted above, this paragraph is a redesignation of current paragraph (b)(3)(ix). Other than the addition of a heading and the provision for use of the fuel dock noted above, there are no other changes proposed for this paragraph.

*Section 13.65(b)(5) Marine Vessel Visible Emissions Standards*

This proposed paragraph would redesignate and revise current paragraph (b)(4) to conform to Public Law 104–333, section 703, and would adopt State of Alaska Marine Vessel Visible Emission Standards as a part of this rule.

*Sections 13.65(b)(6) Through (10)*

Current paragraphs (b)(5) through (b)(9) would be redesignated without change as paragraphs (b)(6) through (b)(10) to accommodate the proposed changes discussed above.

**Compliance With Other Laws**

*Regulatory Planning and Review (Executive Order 12866)*

The Office of Management and Budget has determined that this is not a significant rule and is not subject to review under Executive Order 12866.

This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material

way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These conclusions are based on the analysis contained in the final environmental impact statement and a report prepared on the economic impact of this regulation, "Economic Analysis of Vessel Management Alternatives in Glacier Bay National Park and Preserve", prepared for the NPS, Environmental Quality Division, by Research Triangle Institute.

This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies, or controls. This is an agency specific rule.

This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. It would only affect the operations of various types of motor vessels on waters managed by the park. No grants or other forms of monetary supplement are involved.

This rule does not raise novel legal or policy issues.

*Regulatory Flexibility Act*

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that there will be no incremental negative impacts on small entities because revenue losses are not expected. Possible future increases in vessel quota levels relative to the baseline are expected to lead to incremental increases in business revenue. This certification is based on information contained in the report titled, "Economic Analysis of Vessel Management Alternatives in Glacier Bay National Park and Preserve" (RTI International, Health, Social, and Economic Research, Research Triangle Park, N.C. 27709). This report is available from the NPS, Glacier Bay National Park and Preserve as indicated above under the heading **FOR FURTHER INFORMATION CONTACT**.

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule—

- Does not have an annual effect on the economy of \$100 million or more.

As noted above, no incremental negative impacts on small businesses are expected and possible future increases in vessel quota levels would result in increases in business revenue;

- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The proposed regulations of this rulemaking will generally maintain existing patterns of vessel management in the park relative to costs or prices; and
- 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. The various provisions of this proposed rule do not apply differently to U.S.-based enterprises and foreign-based enterprises.

#### *Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector.

#### *Takings (Executive Order 12630)*

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required because no taking of property will occur as a result of this proposed rule.

#### *Federalism (Executive Order 13132)*

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The proposed rule is limited in effect to federal lands and waters managed by the NPS and will not have a substantial direct effect on state and local government in Alaska.

#### *Civil Justice Reform (Executive Order 12988)*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. This rule does not impose a new burden on the judicial system.

#### *Paperwork Reduction Act*

This regulation requires an information collection from 10 or more parties, which must be submitted for OMB approval under the Paperwork Reduction Act. However, these are not

new collection requirements and, therefore, no additional request to OMB has been prepared. The information collection activities are necessary for the public to obtain benefits in the form of concession contracts and special use permits. Information collection associated with the award of concession contracts is covered under OMB control number 1024-0125; the information collection associated with the issuance of special use permits is covered under OMB control number 1024-0026.

#### *National Environmental Policy Act*

A Final Environmental Impact Statement (FEIS) has been completed and a Record of Decision (ROD) issued. The following topics are addressed in the EIS: soundscape; air quality; water quality; threatened and endangered species; marine mammals; marine birds and raptors; marine fishes; coastal/shoreline environmental and biological communities; cultural resources; visitor experience; vessel use and safety; wilderness resources; local and regional socio-economic conditions.

Both the DEIS and FEIS consider:

- Establishment of vessel quotas and designation of quota seasons for Glacier Bay;
- Definition of vessel classification criteria;
- Exemption of private vessels based in Bartlett Cove;
- Issuance of vessel permits on a short-notice basis;
- Establishment of vessel travel routes for cruise ships and waters closed to cruise ship and/or tour vessel use;
- Vessel speed restrictions and speed measurement methods; and
- Establishment of vessel quotas and designation of quota seasons for tour and/or charter vessels for Dundas Bay (currently no vessel quotas are in place for Dundas Bay).

Several consultations took place with government agencies during the EIS process, including with the Hoonah Indian Association, a federally recognized tribal government; the State of Alaska; NOAA Fisheries; and the U.S. Fish and Wildlife Service. Formal endangered species consultation took place with NOAA Fisheries in accordance with section 7 of the Endangered Species Act.

NOAA Fisheries issued a biological opinion on August 5, 2003. Species considered in the opinion were the Steller sea lion, specifically the threatened eastern stock and the endangered western stock, and the endangered central North Pacific humpback whale. NOAA Fisheries concluded that the “proposed vessel quota increases and operating

requirements in Glacier Bay, as proposed, are not likely to jeopardize the continued existence of listed species in the action area, or destroy or adversely modify designated critical habitat found in the action area.” In formulating its opinion, NOAA Fisheries used the best available information, including information provided in the DEIS that served as the Biological Assessment for section 7 consultation along with information obtained during discussions with NPS staff regarding the new alternative included in the FEIS.

The NPS Alaska Regional Director signed a ROD on November 21, 2003. A notice announcing the decision was published in the **Federal Register** on December 16, 2003 (68 FR 70031). The ROD documents the NPS decision to modify quotas and operating requirements for four types of motor vessels—cruise ships and tour, charter and private vessels—within Glacier Bay. The ROD addresses the continuing demand for motor vessel access into Glacier Bay in a manner that protects park resources and values while also providing a range of opportunities for visitors consistent with park purposes and values. It was based on consideration of the park’s purposes and mission, resources and values, NPS policies, comments received throughout the EIS process, and information and analysis in the EIS. In reaching a decision, NPS carefully considered the comments and concerns expressed by the public throughout the EIS process.

The NPS selected alternative 6, as described in the FEIS, with the following modifications—

- The July 1 through August 21 timeframe during which a 0.25-nautical-mile vessel approach distance to a seal hauled out on ice in Johns Hopkins Inlet waters will be retained as in current regulations and will not be extended to year-round;
- A 13-knot speed limit for vessels greater than or equal to 262 feet (80 meters) will be in effect in Glacier Bay as needed, rather than on a year-round basis; and
- Existing conditions do not support immediate implementation of motor vessel limits in Dundas Bay.

Studies and monitoring are insufficient to support the need for limits at this time. The NPS will undertake study and monitoring of use and resource conditions in Dundas Bay and will impose limits when a clearer need is established. A research framework, developed with the assistance of a scientific advisory board, will help ensure that appropriate studies and monitoring will be

undertaken to guide vessel management, including a decision(s) regarding possible increases in seasonal-use day numbers for cruise ships in Glacier Bay.

None of the effects resulting from any of the alternatives evaluated during the EIS process, including the alternative presented in the ROD, would impair park resources and values.

The FEIS and ROD are available online at: <http://www.nps.gov/glba> or at Glacier Bay National Park and Preserve, as indicated above under the heading **FOR FURTHER INFORMATION CONTACT.**

#### *Government-to-Government Relationship With Tribes*

In accordance with Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249); the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951); the Department of the Interior-Alaska Policy on Government-to-Government Relations with Alaska Native Tribes dated January 18, 2001; Part 512 of the Departmental Manual, Chapter 2, "Departmental Responsibilities for Indian Trust Resources"; and the park consultation agreement with tribal governments, the potential effects on federally-recognized Indian tribes and have been evaluated.

During the past several years, the NPS has developed an effective working relationship with the Hoonah Indian Association and other regional Native organizations with interests in matters pertaining to Glacier Bay National Park and Preserve. All parties consulted concur that Glacier Bay and Dundas Bay lie within the traditional homelands of the Hoonah Tlingits, and that the Hoonah Indian Association, a federally recognized tribal government, is the representative government for Hoonah Tlingits. During this extended consultation the full range of issues relating to vessel quotas, operating requirements, and cultural resources has been identified and discussed at length. Extensive ethnographic research had been conducted to gather detailed information about cultural resources important to Hoonah Tlingits. Meetings were held with the tribal government and with community and tribal members.

#### *Clarity of Rule*

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1)

Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example § 7.XX ..... ) (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

*Drafting Information:* The primary authors of this regulation were: Tomie Lee, Superintendent; Chuck Young, Chief Ranger; Dave Nemeth, Chief of Concessions; and Nancy Swanton, Park Planner at Glacier Bay National Park and Preserve; Jay Liggett, Paul Hunter, and Andee Hansen at the Alaska Regional Office; Russel J. Wilson, Deputy Superintendent, Sequoia and Kings Canyon National Parks and Jerry Case, Regulations Program Manager, Washington, DC.

#### **Public Participation**

If you wish to comment, you may submit your comments by any one of several methods. You may submit comments electronically through the Federal eRulemaking Portal: <http://www.regulations.gov>. The Regulatory Information Number (RIN) must be included. It is 1024-AD25. Your name and return address must be included in the body of your Internet message. You also may mail comments to Superintendent Tomie Patrick Lee, Glacier Bay National Park and Preserve, P.O. Box 140 Gustavus, AK 99826. Finally, you may hand deliver comments to Superintendent Tomie Patrick Lee at Glacier Bay National Park and Preserve Headquarters Office at Bartlett Cove.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will

honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

#### **List of Subjects in 36 CFR Part 13**

Alaska, National Parks, Reporting and recordkeeping requirements.

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

#### **PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA**

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

**Authority:** 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; Sec. 152, Pub. L. 105-277, 112 Stat. 2681-2688.

Section 13.65 also issued under 16 U.S.C. 1a-2(h), 20, 1361, 1531, 3197; Sec. 703, Pub. L. 104-333, 110 Stat. 4185; Sec. 127, Pub. L. 105-83, 111 Stat. 26; Sec. 123, Pub. L. 105-277, 112 Stat. 2681-259, October 21, 1998; Sec. 501, Pub. L. 106-31, 113 Stat. 72, May 21, 1999; and Sec. 130, Pub. L. 107-63, 115 Stat. 442.

Section 13.66(c) also issued under Sec. 1035, Pub. L. 104-333, 110 Stat. 4240, November 12, 1996.

2. Section 13.65 is amended as follows:

A. In paragraph (b)(1), remove the definitions of "Entry", "Operate or operating", "Pursue", and "Vessel use-day".

B. In paragraph (b)(1), revise the introductory language and the definitions of "Charter vessel", "Commercial fishing vessel", "Cruise ship", "Glacier Bay", "Private vessel", "Speed through the water", and "Tour vessel".

C. In paragraph (b)(1), add in alphabetical order definitions of "Daily vessel quota", "Passenger ferry", and "Seasonal vessel quota".

D. Revise paragraph (b)(2).

E. In paragraph (b)(3), revise the introductory language and paragraphs (b)(3)(i) through (v).

F. Redesignate paragraphs (b)(4) through (9) as paragraphs (b)(5) through (10).

G. In paragraph (b)(3)(ix), remove paragraphs (b)(3)(ix)(A), (B), and (C), and redesignate the paragraph and its constituent subparagraphs as shown in the following table:



Current paragraph designation	New paragraph designation
(b)(3)(ix), introductory text .....	(b)(4), introductory text.
(b)(3)(ix)(C)(1), introductory text .....	(b)(4)(i), introductory text.
(b)(3)(ix)(C)(1)(i) .....	(b)(4)(i)(A).
(b)(3)(ix)(C)(1)(ii) .....	(b)(4)(i)(B).
(b)(3)(ix)(C)(1)(iii) .....	(b)(4)(i)(C).
(b)(3)(ix)(C)(1)(iv) .....	(b)(4)(i)(D).
(b)(3)(ix)(C)(1)(v) .....	(b)(4)(i)(E).
(b)(3)(ix)(C)(2), introductory text .....	(b)(4)(ii), introductory text.
(b)(3)(ix)(C)(2)(i) .....	(b)(4)(ii)(A).
(b)(3)(ix)(C)(2)(ii) .....	(b)(4)(ii)(B).
(b)(3)(ix)(C)(2)(iii) .....	(b)(4)(ii)(C).
(b)(3)(ix)(C)(2)(iv) .....	(b)(4)(ii)(D).
(b)(3)(ix)(C)(2)(v) .....	(b)(4)(ii)(E).
(b)(3)(ix)(C)(2)(vi) .....	(b)(4)(ii)(F).
(b)(3)(ix)(C)(2)(vii) .....	(b)(4)(ii)(G).
(b)(3)(ix)(C)(2)(viii) .....	(b)(4)(ii)(H).

H. Redesignate paragraphs (b)(3)(x) and (b)(3)(xi) as paragraphs (b)(4)(ii)(I) and (b)(4)(ii)(J), respectively.

I. Revise redesignated paragraph (b)(4) introductory text.

J. Revise redesignated paragraph (b)(4)(ii)(F).

K. Revise redesignated paragraph (b)(5).

L. In redesignated paragraphs (b)(6) through (10), revise the heading of each paragraph.

The additions and revisions read as follows:

**§ 13.65 Glacier Bay National Park and Preserve.**

\* \* \* \* \*

(b) \* \* \*

(1) *What terms do I need to know?*

\* \* \* \* \*

*Charter vessel* means any motor vessel of less than 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) engaged in transport of passengers for hire and certificated to carry no more than 12 passengers overnight and no more than 49 passengers for daytime use. Charter vessels also include any uninspected motor vessel measuring less than 200 tons gross (U.S. Tonnage “Simplified Measurement System”) and not more than 24 meters (79 feet) in length engaged in transport of passengers for hire.

*Commercial fishing vessel* means any motor vessel conducting fishing activities under the appropriate commercial fishing licenses as authorized under paragraph (a) of this section.

*Cruise ship* means any motor vessel of at least 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) certificated to carry more than 12 passengers for hire.

*Daily vessel quota* means the maximum number of vessels allowed,

by vessel category, on any one calendar day.

*Glacier Bay* means all waters inside a line drawn between Point Gustavus (58.37914 N. Latitude; 135.915445 W. Longitude) and Point Carolus (58.37824 N. Latitude; 136.042250 W. Longitude).

\* \* \* \* \*

*Passenger ferry* means a motor vessel authorized by the Superintendent to engage in the transport of passengers for hire to Bartlett Cove.

*Private vessel* means any motor vessel that is not engaged in business (business includes, but is not limited to, transportation of passengers for hire or commercial fishing).

\* \* \* \* \*

*Seasonal vessel quota* means the maximum number of vessels allowed, by vessel category, during a specific seasonal period.

*Speed through the water* means the speed at which a vessel moves through the water (which itself may be moving), as distinguished from “speed over the ground” (speed measured in relation to a fixed point on the earth).

*Tour vessel* means any motor vessel of less than 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) engaged in transport of passengers for hire and certificated to carry more than 12 passengers overnight or more than 49 passengers for daytime use.

\* \* \* \* \*

(2) *Is a permit required for a vessel in Glacier Bay?* A permit from the superintendent is required for motor vessels in accordance with this section and applicable regulations in this part.

(i) *Private vessel permits and conditions.* In Glacier Bay from June 1 through August 31 an individual must have a permit from the NPS issued for a specific vessel for a specific period of time.

(A) From June 1 through August 31, when the operator of a private vessel

enters Glacier Bay for the first time that calendar year, the operator must go directly to the Bartlett Cove Ranger Station for orientation.

(B) From May 1 through September 30, the operator of a private vessel must immediately notify the Bartlett Cove Ranger Station of the vessel’s entry to or exit from Glacier Bay.

(ii) *Commercial vessel permits and conditions.* Each commercially operated motor vessel must have a permit to operate in Glacier Bay National Park and Preserve in accordance with § 5.3 of this chapter.

(A) A cruise ship must have a concession contract to operate in Glacier Bay.

(B) A tour vessel, charter vessel, and passenger ferry must have a commercial authorization to operate in Glacier Bay.

(C) The operator of a cruise ship, tour vessel, charter vessel, and passenger ferry must notify the Bartlett Cove Ranger Station of the vessel’s entry into Glacier Bay within 48 hours in advance of entering Glacier Bay or immediately upon entry.

(D) Cruise ships and tour vessels are prohibited from operating in the Beardslee Entrance and at the entrance to Adams Inlet, as defined as waters within the Wilderness boundaries in those respective areas.

(E) Off-boat activity from a cruise ship, tour vessel, or charter vessel is prohibited, unless authorized by the superintendent.

(F) Off-boat activity from a passenger ferry is prohibited, except for passenger access at the Bartlett Cove docks.

(G) A passenger ferry must travel a direct course between the mouth of Glacier Bay and Bartlett Cove, except as provided in paragraph (b)(1)(iii)(E) of this section.

(iii) *Exceptions from vessel permit requirement.* A vessel permit is not required in Glacier Bay when—



(A) A motor vessel is engaged in official, non-commercial business of the state or federal government;

(B) A motor vessel is operating in Bartlett Cove waters east of a line extending from the long axis of the fuel dock to the wilderness boundary at Lester Island;

(C) One motor vessel is launched from a motor vessel that has a permit and only while the authorized motor vessel remains at anchor or operated in

accordance with a concession agreement from a permitted motor vessel while that vessel is not underway.

(D) A commercial fishing vessel authorized under paragraph (a) of this section is actively engaged in commercial fishing; or

(E) A vessel is granted safe harbor by the superintendent.

(iv) *Prohibitions.* (A) Operating a motor vessel in Glacier Bay without a required permit is prohibited.

(B) Violating a term or condition of a permit or an operating condition or restriction issued or imposed pursuant to this chapter is prohibited.

(C) The superintendent may immediately suspend or revoke a permit or deny a future permit request as a result of a violation of a provision of this chapter.

(v) *Restrictions on vessel entry.* The superintendent will allow vessel entry in accordance with the following table:

Type of vessel	Daily vessel quotas (DVQ)	Period covered by DVQ	Seasonal vessel quota (SVQ)	Period covered by SVQ
Cruise ship .....	2	Year-round .....	Up to 184 Up to 122	June 1–August 31. May and September.
Tour vessel .....	3	Year-round .....	n/a .....	n/a.
Charter vessel .....	6	June 1–Aug. 31 .....	n/a .....	n/a.
Private vessel .....	25	June 1–Aug. 31 .....	n/a .....	n/a.
Passenger ferry .....	1	Year-round .....	n/a .....	n/a.

**Note:** Cruise ships and tour vessels are limited to the daily vessel quota year-round. Charter and private vessels are not subject to quotas from September through May.

(A) The director will reduce the vessel quota levels for any or all categories of vessels in this section as required to protect the values and purposes of Glacier Bay National Park and Preserve. The director will make these reductions based on the controlling biological opinion issued by the National Oceanic and Atmospheric Administration Fisheries under section 7 of the Endangered Species Act, applicable authority, and any other relevant information.

(B) The superintendent will annually determine the cruise ship quota. This determination will be based upon applicable authorities, appropriate public comment and available scientific and other information. The number will be subject to the maximum daily vessel quota of two vessels.

(C) Nothing in this section will be construed to prevent the superintendent from taking any action at any time to protect the values and purposes of Glacier Bay National Park and Preserve.

(3) *What are the rules for operating vessels?* (i) Operating a vessel within one-quarter nautical mile of a whale is prohibited, except for a commercial fishing vessel authorized under paragraph (a) of this section that is actively trolling, setting, or pulling long lines, or setting or pulling crab pots.

(ii) The operator of a vessel inadvertently positioned within one-quarter nautical mile of a whale must immediately slow the vessel to ten knots or less, without shifting into reverse unless impact is likely. The operator must direct or maintain the vessel on as steady a course as possible away from

the whale until at least one-quarter nautical mile of separation is established. Failure to take such action is prohibited.

(iii) The operator of a vessel or seaplane positioned within one-half nautical mile of a whale is prohibited from altering course or speed in a manner that results in decreasing the distance between whale and the vessel or seaplane.

(iv) *Whale water designations and restrictions.* (A) From May 15 through September 30, the following waters are designated whale waters—

(1) Waters north of a line drawn from Point Carolus to Point Gustavus and south of a line drawn from the northernmost point of Lars Island across the northernmost point of Strawberry Island to the point where it intersects the line that defines the Beardslee Island group, and following that line south and west to the Bartlett Cove shore (so as to include the Beardslee Entrance and Bartlett Cove); and

(2) Other waters designated by the superintendent as temporary whale waters.

(B) The public will be notified of other waters designated as temporary whale waters in accordance with § 1.7 of this chapter.

(C) Violation of a whale water restriction is prohibited. The following restrictions apply in whale waters unless otherwise provided by the superintendent in the designation:

(1) Operating a motor vessel less than one nautical mile from shore (where the width of the water permits), or in narrower areas navigating outside of

mid-channel is prohibited. This restriction does not apply to motor vessels less than 18 feet in length, or vessels actively engaged in fishing activities or operating solely under sail.

(2) Unless other restrictions apply, operators may perpendicularly approach or land on shore (*i.e.*, by the most direct line to shore) through designated whale waters, but they may not transit along the shore.

(3) Operators must follow motor vessel speed limits in paragraph (b)(3)(v)(A) of this section.

(v) *Speed restrictions.* (A) From May 15 through September 30 in designated whale waters the following are prohibited—

(1) Operating a motor vessel at more than 20 knots speed through the water; or

(2) Operating a motor vessel at more than 13 knots speed through the water, when the superintendent has designated a maximum speed of 13 knots.

(B) From July 1 through August 31, operating a motor vessel on Johns Hopkins Inlet waters south of 58°54.2' N. latitude (a line running due west from Jaw Point) at more than 10 knots speed through the water is prohibited.

\* \* \* \* \*

(4) *Other restrictions.* The superintendent will make rules for the safe and equitable use of Bartlett Cove waters and for park docks. The superintendent will notify the public of these rules by posting a sign or a copy of them at the dock. Failure to obey a sign or posted rule is prohibited.

\* \* \* \* \*

(ii) \* \* \*

(F) Utilizing the fuel dock for activities other than fueling and waste pump-out is prohibited. Other uses may be authorized by the Superintendent to protect park resources or public safety.

\* \* \* \* \*

(5) *What are the emission standards for vessels?* (i) The State of Alaska statutes and regulations applicable to marine vessel emission standards are adopted as a part of these regulations.

(ii) Violating a State of Alaska statute or regulation applicable to marine vessel visible emission standards is prohibited.

(6) *May I collect or burn interstadial wood?* \* \* \*

(7) *May I collect rocks and minerals?* \* \* \*

(8) *May I collect goat hair?* \* \* \*

(9) *Do I need a camping permit in Glacier Bay?* \* \* \*

(10) *Is a permit required to transport passengers between Bartlett Cove and Gustavus?* \* \* \*

Dated: February 7, 2006.

**Matthew J. Hogan,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 06-2000 Filed 3-2-06; 8:45 am]

BILLING CODE 4310-70-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2005-VA-0014; FRL-8039-9]

### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Technical Documents Incorporated by Reference

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia consisting of revised citations, editions, and corrected addresses to documents which are incorporated by reference in Virginia's SIP-approved regulations. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial

submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by April 3, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2005-VA-0014 by one of the following methods:

A. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. E-mail: [frankford.harold@epa.gov](mailto:frankford.harold@epa.gov).

C. Mail: EPA-R03-OAR-2005-VA-0014, Harold A. Frankford, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2005-VA-0014. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically

captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Harold A. Frankford, (215) 814-2108, or by e-mail at [frankford.harold@epa.gov](mailto:frankford.harold@epa.gov).

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the Virginia rule that are not the subject of an adverse comment.

Dated: February 22, 2006.

**William Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 06-1942 Filed 3-2-06; 8:45 am]

BILLING CODE 6560-50-P