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UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

GLACIER BAY NATIONAL PARK

January 5, 2006

Tomie Patrick Lee  
National Park Service  
Glacier Bay National Park and Preserve  
P.O. Box 140  
Gustavus, Alaska 99826-0140

Dear Superintendent Lee:

Thank you for your December 15, 2005 letter informing NOAA Fisheries of the National Park Service's plans to implement actions outlined in the Record of Decision (ROD) for the Final Environmental Impact Statement for Glacier Bay National Park Vessel Quotas and Operating Requirements. We recognize that the ROD allows for an increase from 139 cruise ship seasonal use days to a maximum of 184 seasonal use days (June through August) annually, and that your intention is to maintain the 139 cruise ship seasonal use days for the 2006 season with an incremental increase of 10% to 153 cruise ship entries for the 2007 operating season.

In the interests of threatened and endangered marine species, NOAA Fisheries concurs with the Park Service's incremental approach to gradually increase visitation levels rather than promoting actions to allow maximum visitation all at once. This approach is consistent with the conservation recommendations stated in our August 2003 Biological Opinion (Opinion), and we agree that this gradual and step-wise increase is less likely to result in adverse effects to threatened and endangered Steller sea lions and endangered humpback whales inhabiting Glacier Bay National Park. Consistent with our recommendations in the Opinion, maintaining the existing cruise ship quota for 2006 will allow for baseline data to be collected before an increase takes place. This is an essential component to monitoring changes in species' behavior, abundance, and distribution that may occur as a result of changes in the amount of vessel traffic using Park waters.

We would also like to respond to your request for guidance regarding some of the issues raised in this 2003 Opinion, particularly the concern over the lack of an incidental take statement. In the Opinion, NOAA Fisheries stated that once levels of humpback whale and Steller sea lion take could be determined, the Park Service should apply for an incidental harassment authorization (IHA) and the Opinion would subsequently be modified to include an incidental take statement (ITS). However, given statutory requirements for obtaining incidental harassment authorizations, we need to clarify and revise this recommendation.

In accordance with the requirements of the Marine Mammal Protection Act (MMPA) and Endangered Species Act (ESA), since an IHA is a prerequisite for issuing an ITS, it will not be possible to include an ITS in the 2003 Opinion. Section 101(a)(5)(A) of the



MMPA states that “Upon request therefore by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specified geographic region, the Secretary shall allow...the incidental, but not intentional, taking by citizens while engaging in that activity within that region of small numbers of marine mammals of a species or population stock...” This statutory language specifically authorizes U.S. citizens to apply for incidental take allowances. As such, an IHA cannot be granted under the MMPA in this case because foreign-flagged cruise ships, as IHA applicants and operators in Glacier Bay, are not U.S. citizens.

In the Conservation Recommendations of the 2003 Opinion, NOAA Fisheries stated “Upon determination of appropriate take levels...NMFS will amend this Opinion to include an ESA incidental take statement for listed species in the action area. No increases in cruise ship entries into Glacier Bay from the 2003 levels should occur until these determinations have been made.” With this letter, we acknowledge that we will not be able to amend the Opinion to include an ITS given the MMPA 101(a)(5)(A) requirements that stipulate that authorizations be granted to U.S. citizens. This letter should serve as a revision to the original recommendation stated above.

We would like to commend the Park Service for continued monitoring of the humpback whale population in Glacier Bay and the evaluation of underwater noise levels from vessel traffic, while also reiterating our recommendation from the Opinion that the Park Service continue such monitoring into the future to determine if increasing the number of seasonal use days results in increased disturbances to marine mammals. We also strongly support the Science Advisory Board’s commitment to recommend and prioritize studies to further understand the impacts of cruise ships on protected marine resources in Glacier Bay. We look forward to continued collaboration between NOAA Fisheries and the Park Service to protect marine species in Park waters.

If you have further questions related to incidental harassment authorizations or incidental take statements, please do not hesitate to contact my staff in the Protected Resources Division at (907) 586-7235 or visit NOAA Fisheries’ website at <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Mecum", written over a light gray rectangular background.

Doug Mecum

Acting Administrator, Alaska Region