

# LOVING ALASKA TO DEATH: HOW ALASKA CAN CONSTITUTIONALLY RESTRICT CRUISE TOURISM TO COMBAT OVERTOURISM

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## ABSTRACT

*Alaska is a bucket list destination for many tourists who feel the “call of the wild.” From spotting wildlife to watching the northern lights dance across the night sky, exploring Alaska is a once-in-a-lifetime experience most people can only dream of. Cruise tourism helps to make this dream possible. However, cruise tourism contributes to what is known as “overtourism,” which happens when too many people visit the same place at the same time, negatively impacting their own travel experiences, local communities, and the physical environment.*

*Communities in Southeast Alaska rely on the economic benefits of cruise tourism, but many residents wonder whether these benefits outweigh the costs of overtourism. Juneau, Alaska’s capital city, has memoranda of agreement with popular cruise lines, limiting the number of ships and passengers allowed to visit the city within a given day. Yet, residents push for further restrictions. Residents of other Southeast Alaska cities seek similar regulations but have been repeatedly denied due to constitutional concerns, like potential challenges under the Dormant Commerce Clause. With the construction of a new cruise port looming over Juneau, there is no sign that the cruise tourism industry will slow down any time soon.*

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*This Note argues that Southeast Alaska's current cruise restrictions—or lack thereof—are inadequate to address the negative effects of overtourism. State legislators must step in, balancing the state's economic need with the need to protect local communities and Alaska's fragile environment. Specifically, this Note argues that state legislators should enact a law limiting the size of cruise ships permitted to dock in Southeast Alaska.*

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## INTRODUCTION

Nestled between snow-capped mountains, about a thousand miles north of Seattle, Washington, sits a charming, coastal community: Juneau, Alaska.<sup>1</sup> It is a hidden gem in the winter.<sup>2</sup> Its colorful shops and restaurants are mostly boarded up for the season.<sup>3</sup> Its streets are quiet—just “how locals like it.”<sup>4</sup> But that is only half the story. During the other half of the year,<sup>5</sup> Juneau’s docks are lined with large cruise ships.<sup>6</sup> Its historic downtown is swarmed with thousands of tourists, drawn to the quaint city for its remoteness and promise of adventure.<sup>7</sup>

“Too many people, not enough infrastructure.”<sup>8</sup> “Too many people at the glacier and downtown.”<sup>9</sup> “Too many people and ships . . . too much!”<sup>10</sup> This is what residents of Juneau, Alaska’s capital city, had to say about the 2023 cruise season.<sup>11</sup> Alaska is

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1. See *Fast Facts*, TRAVEL JUNEAU, <https://www.traveljuneau.com/media/fast-facts/> [<https://perma.cc/64KD-QB6F>] (last visited Dec. 27, 2025).

2. See Tony Harrington, *Juneau, Alaska—Is This the Last Undiscovered Ski Town in North America?*, MOUNTAINWATCH (June 13, 2024), <https://www.mountainwatch.com/Snow-news/is-this-the-last-undiscovered-ski-town-in-north-america/> [<https://perma.cc/3KTC-KHG7>].

3. See Mark Sabbatini, *Downtown Businesses Open After Last Ship Leaves Plan for Lean Winter, Worry About Proposed Douglas Dock*, JUNEAU EMPIRE (Oct. 27, 2024, at 13:01 AKT), <https://www.juneauempire.com/news/downtown-businesses-open-after-last-ship-leaves-plan-for-lean-winter-worry-about-proposed-douglas-dock/> [<https://perma.cc/5NHZ-4VZU>].

4. Elaine Glusac, *Alaska in Winter: Reveling in a Playground of Ice and Snow*, N.Y. TIMES (Dec. 16, 2024), <https://www.nytimes.com/2024/12/16/travel/juneau-budget-skiing.html> [<https://perma.cc/QSB8-PTYD>].

5. Cruise season in Alaska typically lasts from April to October. See MCKINLEY RSCH. GRP., JUNEAU TOURISM SURVEY 22 (2023), <https://juneau.org/wp-content/uploads/2023/12/CBJ-Tourism-Survey-2023-Report-12.11.23.pdf> [<https://perma.cc/NZH7-EFE9>] [hereinafter MCKINLEY RSCH. GRP.] (listing survey prepared for the City and Borough of Juneau (“CBJ”)).

6. See Harrington, *supra* note 2; see also MCKINLEY RSCH. GRP., *supra* note 5, at 29–34 (providing a list of commentary from locals in Juneau including opinions on the abundance of cruise ships in the area).

7. See MCKINLEY RSCH. GRP., *supra* note 5, at 32–34; Juneau, ALASKA.ORG, <https://www.alaska.org/destination/juneau#about> [<https://perma.cc/XTX5-UGEZ>] (last visited Dec. 27, 2025).

8. MCKINLEY RSCH. GRP., *supra* note 5, at 34.

9. *Id.* at 33.

10. *Id.*

11. See *id.* at 29–34.

a dream destination for travelers from around the world.<sup>12</sup> Given the state's remoteness,<sup>13</sup> cruising helps make this dream a reality, which is probably why it is the most popular way to visit Alaska.<sup>14</sup> Tourism is one of Alaska's top industries, substantially contributing to the state's economy and sustaining local communities.<sup>15</sup> However, after 1,650,000 cruise passengers flooded Juneau, many residents question whether the economic benefits are worth the burden.<sup>16</sup>

Although many Southeast Alaska residents support tourism, the sheer volume of passengers has become a growing concern because it contributes to what is called "overtourism."<sup>17</sup> Overtourism happens when too many people visit the same place at the same time, causing significant implications for tourists, local communities, and the physical environment.<sup>18</sup> From a tourist's perspective, overtourism results in overcrowding and

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12. See, e.g., *USA Bucket List: BEST Places to Visit in the USA*, BUCKET LIST LISTS, <https://bucketlistlists.com/usa-bucket-list/> [https://perma.cc/Y45M-2UBD] (last visited Dec. 27, 2025).

13. Popular destinations like Juneau and Sitka are only accessible via air and sea, limiting transportation options for tourists. See Becky Bohrer, *The Isolated Tourist Hotspot Taking Action to Stop Overtourism from Cruise Ships*, INDEP. (July 8, 2024, at 08:07 BST), <https://www.independent.co.uk/travel/news-and-advice/juneau-alaska-cruise-ship-ban-b2575786.html> [https://perma.cc/Y7T2-UCJN]; *About Sitka, CITY & BOROUGH OF SITKA, ALASKA*, <https://www.cityofsitka.com/about-sitka#:~:text=Accessible> [https://perma.cc/T28P-R463] (last visited Dec. 27, 2025).

14. See *Getting to & Around Alaska: By Cruise*, TRAVEL ALASKA, <https://www.travelalaska.com/getting-to-around/by-cruise> [https://perma.cc/3P8K-ZFVB] (last visited Dec. 29, 2025).

15. See *Exploring Alaska's Top Industries*, ALASKA AIR FORWARDING, <https://www.alaskaair-cargo.com/alaska/exploring-alaska-top-industries/> [https://perma.cc/8Q3S-CLAB] (last visited Dec. 29, 2025).

16. See MCKINLEY RSCH. GRP., *supra* note 5, at 7, 33–34.

17. See Stuart Hallam, *My Turn: It Is Possible to Be Pro-Tourism and Believe Juneau Is Oversaturated with Cruise Ships*, JUNEAU EMPIRE (May 20, 2024, at 19:17 ET), <https://www.juneaumedia.com/opinion/my-turn-it-is-possible-to-be-pro-tourism-and-believe-juneau-is-oversaturated-with-cruise-ships/> [https://perma.cc/R4FC-4CRU]; Barry D. Solomon, *Limiting Tourism to Sustainable Levels: Options for Hawai'i*, 64 NAT. RES. J. 208, 209 (2024); Dalia Perkumienė & Rasa Pranskūnienė, *Overtourism: Between the Right to Travel and Residents' Rights*, SUSTAINABILITY at 1, 6 (2019).

18. Solomon, *supra* note 17, at 208–09; Perkumienė & Pranskūnienė, *supra* note 17, at 6; Kate Leahy, *What's the Problem with Overtourism?*, NAT'L GEOGRAPHIC (Sep. 7, 2023), <https://www.nationalgeographic.com/travel/article/what-is-overtourism> [https://perma.cc/39RL-EBLN]; Kaitlyn Brajich, *What Is Overtourism and Why Is It a Problem?*, SUSTAINABLE TRAVEL INT'L (Apr. 30, 2025), <https://sustainabletravel.org/what-is-overtourism/> [https://perma.cc/Q52C-KKNZ].

increased costs.<sup>19</sup> The repercussions are far more serious for local communities, who are left to pick up the pieces after tourists pack up and leave for the season, and for Alaska's unique, vulnerable environment.<sup>20</sup> Large cruise ships especially contribute to overtourism by disembarking thousands of passengers at a time, disrupting residents' daily lives and exacerbating environmental issues by contributing to waste and pollution and harming wildlife.<sup>21</sup>

Southeast Alaska communities want regulations placed on cruise ships to manage overtourism.<sup>22</sup> Currently, Juneau has signed memoranda of agreement with popular cruise lines capping the number of passengers and ships permitted per day, but this is only a temporary fix, as it fails to alleviate the environmental harms caused by large cruise ships.<sup>23</sup> Meanwhile, other communities in the region are left with little to no government planning or regulatory support to resist overtourism.<sup>24</sup> Despite these concerns, a private corporation recently announced its partnership with Royal Caribbean, a popular cruise line, to develop a new cruise port in Juneau.<sup>25</sup> Clearly, the ever-growing

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19. Solomon, *supra* note 17, at 208–09; Leahy, *supra* note 18.

20. See *infra* Section I.C.

21. See *infra* Section I.B.1.

22. See Claire Stremple, *A Citizen Initiative to Limit Cruise Ships Advances in Juneau, While Another Stalls in Sitka*, ALASKA BEACON (July 3, 2024, at 16:28 ET), <https://alaskabeacon.com/2024/07/03/a-citizen-initiative-to-limit-cruise-ships-advances-in-juneau-while-another-stalls-in-sitka> [https://perma.cc/C8EY-AFN4]; Hallam, *supra* note 17.

23. See *Memorandum of Agreement Between the City & Borough of Juneau and Cruise Lines Docking in Juneau* (Mar. 16, 2023), <https://juneau.org/wp-content/uploads/2023/05/CBJ-CRUISE-LINES-MEMORANDUM-OF-AGREEMENT.pdf>. [https://perma.cc/7A9W-7YBL] [hereinafter 2023 Juneau MOA]; *Memorandum of Agreement between the City & Borough of Juneau and Cruise Lines Docking in Juneau* (May 31, 2024), [https://juneau.org/wp-content/uploads/2024/06/5.31.24\\_CBJ\\_CruiseLines-MOA3\\_Fully-Executed.pdf](https://juneau.org/wp-content/uploads/2024/06/5.31.24_CBJ_CruiseLines-MOA3_Fully-Executed.pdf) [https://perma.cc/G4ZX-3L95] [hereinafter 2024 Juneau MOA].

24. See LEE K. CERVENY, TOURISM AND ITS EFFECTS ON SOUTHEAST ALASKA COMMUNITIES: CASE STUDIES FROM HAINES, CRAIG, AND HOONAH, ALASKA 1 (2005); Stremple, *supra* note 22.

25. Press Release, Goldbelt, Inc., Goldbelt Signs Agreement with Royal Caribbean Group to Build a Cruise Port in Juneau (Oct. 16, 2024) [hereinafter Press Release: Goldbelt Signs with Royal Caribbean], <https://mygoldbelt.com/news/item/2024-10-16/PRESS-RELEASE-Goldbelt-Signs-Agreement-with-Royal-Caribbean-Group-to-Build-a-Cruise-Port-in-Juneau>? [https://perma.cc/Q9Z8-ZU8H]; Clarise Larson, *Goldbelt, Royal Caribbean Announce New Cruise Ship Port Plans on Douglas Island, KTOO* (Oct. 16, 2024),

cruise industry will not slow down any time soon.<sup>26</sup> Now more than ever, the Alaska state legislature must act to address over-tourism.

State legislators must intervene to protect local communities and preserve the very environment that sustains Alaska's tourism industry.<sup>27</sup> Actors within the industry, including cruise lines and local businesses, argue that such legislation is unconstitutional under the Dormant Commerce Clause.<sup>28</sup> Although this issue has yet to be addressed by the Supreme Court or Ninth Circuit,<sup>29</sup> the First Circuit recently reviewed a case involving whether a local ordinance regulating cruise tourism violates the Dormant Commerce Clause.<sup>30</sup>

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<https://www.ktoo.org/2024/10/16/goldbelt-royal-caribbean-announce-new-cruise-ship-port-plans-on-douglas-island/> [<https://perma.cc/3N4Y-9AQ4>].

26. Press Release: Goldbelt Signs with Royal Caribbean, *supra* note 25; Larson, *supra* note 25.

27. *See infra* Section I.C.

28. *See* Letter from Scott Kendall, Att'y on behalf of Royal Caribbean Cruises, Ltd., to Robert Palmer, III, Mun. Att'y for the City and Borough of Juneau ("CBJ") (June 19, 2024), <https://juneau.org/wp-content/uploads/2024/07/letters-combined.pdf> [<https://perma.cc/7KL7-CCAV>]; Letter from Jeremy Plank & Jamey Cagle, on behalf of Allen Marine Tours, Inc. & Affiliates, to Beth McEwen, Mun. Clerk for the CBJ, <https://juneau.org/wp-content/uploads/2024/07/letters-combined.pdf> [<https://perma.cc/7KL7-CCAV>]; Letter from Jonathan W. Katchen, Att'y on behalf of A.J. Juneau Dock, LLC, to Robert Palmer, III, Mun. Att'y for the CBJ (Apr. 19, 2024), <https://juneau.org/wp-content/uploads/2024/07/letters-combined.pdf> [<https://perma.cc/7KL7-CCAV>]; E-mail from Jonathan W. Katchen, Att'y on behalf of Franklin Dock Enters., LLC, to Robert Palmer, III, Mun. Att'y for the CBJ (Apr. 22, 2024), <https://juneau.org/wp-content/uploads/2024/07/letters-combined.pdf> [<https://perma.cc/7KL7-CCAV>]; *see also* Memorandum from Sara L. Peterson, Mun. Clerk for the City and Borough of Sitka ("CBS"), to Klaudia Leccese & Lawrence Edwards (Dec. 16, 2024), [https://www.kcaw.org/wp-content/uploads/2024/12/FINAL\\_Leccese\\_Edwards-Iniative-Response\\_121624-OCRd.pdf?x54223](https://www.kcaw.org/wp-content/uploads/2024/12/FINAL_Leccese_Edwards-Iniative-Response_121624-OCRd.pdf?x54223) [<https://perma.cc/XH2V-UYCC>] [hereinafter Sitka Memo] (providing similar objections from Sitka municipal officials).

29. Alaska falls under the Ninth Circuit, along with Arizona, the Central, Eastern, Northern, and Southern Districts of California, Guam, Hawaii, Idaho, Montana, Nevada, the Northern Mariana Islands, Oregon, and the Eastern and Western Districts of Washington. *What is the Ninth Circuit?*, U.S. CT. FOR THE NINTH CIR., <https://www.ca9.uscourts.gov/judicial-council/what-is-the-ninth-circuit/> [<https://perma.cc/NHH5-5SSR>] (last visited Dec. 29, 2025). The District of Alaska did address restrictive ordinances under the Commerce Clause, suggesting local fees imposed on cruise liners could "unduly burden interstate commerce." *See* Cruise Lines Int'l Ass'n Alaska v. City & Borough of Juneau, 356 F. Supp. 3d 831, 854 (D. Alaska 2018). However, the court later dismissed those claims. *Id.* at 855.

30. Ass'n to Pres. & Protect Loc. Livelihoods v. Sidman, 147 F.4th 40 (1st Cir. 2025).

This Note argues that Alaska state legislators legally can and should address the effects of overtourism by enacting a law limiting the size of cruise ships allowed to dock in Southeast Alaska. Part I explores how the Alaskan tourism industry has taken shape over time and its role in the state's economy today. This Part also defines overtourism and describes its environmental, economic, and sociocultural impacts on Southeast Alaska. Part II assesses Southeast Alaska's current cruise tourism restrictions, focusing on Juneau and Sitka. Specifically, this Part discusses Juneau's memoranda of agreement with cruise lines and Sitka's failed attempts to impose similar regulations. Part III proposes that state legislators should ban large cruise ships from Southeast Alaska. First, this Part argues that Southeast Alaska's current restrictions are insufficient and enacting a law is the best solution. Next, this Part offers a more sustainable alternative for tourists: small cruise ships. Finally, this Part analyzes the *Bar Harbor* case and the subsequent First Circuit appeal to examine a potential state law banning large cruise ships from Southeast Alaska.

## I. TOURISM IN SOUTHEAST ALASKA

Before Alaska was even ratified as a state, tourists, scientists, and gold prospectors alike commodified Alaska for its natural beauty and resources.<sup>31</sup> Since tourists first visited Southeast Alaska in the 1880s to today, the tourism industry has become an economic cornerstone for the state.<sup>32</sup> However, this once mutually beneficial relationship between tourists and local

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31. See *infra* Section I.A.

32. See *A Century of Cruising*, TRAVEL JUNEAU, <https://www.traveljuneau.com/discover-juneau/history/century-of-cruising/> [https://perma.cc/2R4D-M5DM] (last visited Dec. 29, 2025); Stephen Haycox, *Tourism in Alaska's Past*, ALASKA HIST. SOC'Y, <https://alaskahistoricalociety.org/discover-alaska/glimpses-of-the-past/tourism-in-alaskas-past/> [https://perma.cc/A7HB-QEVQ] (last visited Jan. 7, 2026); *Exploring Alaska's Top Industries*, *supra* note 15.

communities has grown lopsided.<sup>33</sup> As overtourism takes its toll on communities and the physical environment, many are left questioning whether the financial rewards outweigh the damage.<sup>34</sup>

#### *A. Early Tourism*

A brief overview of the state's history sheds light on the current tourism industry in Southeast Alaska. The oldest known human inhabitants of the region are the Tlingit and Haida people, dating back to prehistoric times.<sup>35</sup> Today, Native Americans, or Alaska Natives, make up 15.7% of Alaska's population—a higher percentage of native people than any other state.<sup>36</sup> Europeans did not explore the territory until the 1740s.<sup>37</sup> By 1799, Russia established a booming fur-trading business in the region, trading its furs to the wealthy.<sup>38</sup> In 1867, the United States purchased the Alaskan territory from Russia for just \$7 million.<sup>39</sup> However, Alaska was not ratified as a state until 1959, almost 100 years after its acquisition.<sup>40</sup>

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33. *See generally* CERVENY, *supra* note 24, at i–ix (describing the tenuous relationship between the tourism industry and Southeast Alaska communities); MCKINLEY RSCH. GRP., *supra* note 5, at 2 (reflecting that Juneau residents' attitudes towards tourists have worsened over time).

34. *See* Stremple, *supra* note 22; Hallam, *supra* note 17.

35. CERVENY, *supra* note 24, at 17.

36. Richard Sheposh, *Alaska Natives (Indigenous Peoples of Alaska)*, EBSCO RSCH. (2024), <https://www.ebsco.com/research-starters/ethnic-and-cultural-studies/alaska-natives-indigenous-peoples-alaska#full-article> [https://perma.cc/B5BM-SYF6]; Ana I. Sánchez-Rivera, Paul Jacobs & Cody Spence, *A Look at the Largest American Indian and Alaska Native Tribes and Villages in the Nation, Tribal Areas and States*, U.S. CENSUS BUREAU (Oct. 3, 2023), <https://www.census.gov/library/stories/2023/10/2020-census-dhc-a-ian-population.html> [https://perma.cc/8T8T-NPCL].

37. *Alaska*, HISTORY.COM (May 28, 2025), <https://www.history.com/articles/alaska> [https://perma.cc/9EZU-TNWM].

38. *Id.*

39. *Id.* \$7 million in 1867 is the equivalent of about \$153 million in 2025. *Value of \$7,000,000 from 1867 to 2025*, INFLATION CALCULATOR, <https://www.in2013dollars.com/us/inflation/1867?amount=7000000#:~:text=%247%2C000%2C000%20in%201867%20is%20equivalent,cumulative%20price%20increase%20of%202%2C032.47%25> [https://perma.cc/B7BX-QYY2] (last visited Dec. 29, 2025).

40. William Seward, the U.S. Secretary of State who bought Alaska, was criticized for the purchase, which became known as "Seward's Folly." Sonja Anderson, *On This Day in 1959, Alaska—One of America's Riskiest Investments—Became the 49th State in the Union*, SMITHSONIAN MAG. (Jan. 3, 2025), <https://www.smithsonianmag.com/smart-news/on-this-day-in-1959-alaska-one-of-americas-riskiest-investments-became-the-49th-state-in-the-union-5000044001/>.

Russia's fur-trading business was not the only commercialization of Alaska's natural resources.<sup>41</sup> Just five years after the United States purchased Alaska, gold was discovered near Sitka, prompting over 60,000 prospectors to travel to the territory in the 1880s.<sup>42</sup> During the following decade, gold was found near the Klondike River, motivating another 100,000 prospectors to migrate there.<sup>43</sup> In 1899, a renowned scientific expedition further spotlighted Alaska when scientists discovered hundreds of plant species and published photos of the landscape and native people.<sup>44</sup> The commodification of other natural resources such as fish and timber also generated interest in the region.<sup>45</sup>

Tourism is another way that people have taken advantage of Alaska's beautiful landscape and natural resources.<sup>46</sup> Tourists first visited Alaska when the Pacific Coast Steamship Company set sail from San Francisco to Glacier Bay in 1881.<sup>47</sup> Of course, cruising looked a bit different back then.<sup>48</sup> Passengers paid as little as fifteen dollars and often traveled alongside gold prospectors, freight, and even livestock.<sup>49</sup> Ships ventured through the "Inside Passage" along the southeastern coast of Alaska, offering travelers the opportunity to explore glaciers, native villages, and "gold rush boomtowns."<sup>50</sup> Writers and

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alaska-one-of-americas-riskiest-investments-became-the-49th-state-in-the-union-180985757/ [https://perma.cc/B9GD-LZLV]. Alaska was not ratified until about 100 years after its purchase, in part due to slow American expansion into the territory and its proximity to the Soviet Union. *See id.*

41. *See Alaska*, *supra* note 37; CERVENY, *supra* note 24, at 17–19.

42. *Alaska*, *supra* note 37.

43. *Id.*

44. This exploration was known as the Harriman Expedition. *Id.*

45. CERVENY, *supra* note 24, at 17–18.

46. *See A Century of Cruising*, *supra* note 32; Haycox, *supra* note 32.

47. *Id.*; Tim Bradner, *A Century of Cruising*, CRUISE LINES INT'L ASSOC., <https://akcruise.org/a-century-of-cruising/> [https://perma.cc/3KYT-G6V3] (last visited Dec. 29, 2025).

48. *A Century of Cruising*, *supra* note 32.

49. *Id.*

50. CERVENY, *supra* note 24, at 19. Some well-known gold rush boomtowns include Nome, Fairbanks, Anchorage, and Sitka. *Gold Rush*, LIBR. OF CONGRESS,

scientists published the territory's first travel guides, inviting more tourists to traverse the region.<sup>51</sup>

Fast forward to the 1930s and traveling to Alaska is much more extravagant.<sup>52</sup> During this time period, steamship tours lasted from two to five weeks and might cost between \$350 to \$600, not including excursions and other extras.<sup>53</sup> In contrast, at the time, a six-week trip to Europe cost about \$350.<sup>54</sup> Tourists could only visit Alaska during a short season—mid-June until the end of August—because, otherwise, the rivers froze and snow covered the roads.<sup>55</sup> These conditions, along with the lack of accommodations, made for very inconvenient travel.<sup>56</sup> Still, historians estimate that about 30,000 tourists visited Alaska in 1929.<sup>57</sup> Steamship travel remained prevalent through the 1930s, generating seasonal income for many locals.<sup>58</sup>

Alaska's tourism industry has grown steadily since tourists first set sail for the region in the 1880s.<sup>59</sup> After World War II, tourism continued to prosper when new transportation infrastructure made alternative methods of travel more accessible.<sup>60</sup> Road improvements to highways, ferry systems, and commercial flights made it easier for tourists to visit the territory.<sup>61</sup> The Alaska Visitor's Association, founded in 1951, and local tourism agencies marketed Alaska as "The Last Frontier" to tourists worldwide, turning a profit from Alaska's beautiful landscape

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<https://www.loc.gov/collections/meeting-of-frontiers/articles-and-essays/alaska/gold-rush/>  
[https://perma.cc/D5E8-YVF2] (last visited Dec. 29, 2025).

51. CERVENY, *supra* note 24, at 19.

52. See Haycox, *supra* note 32.

53. The costs and lengths of these trips ruled out "nearly everyone but wealthy oilmen and very frugal school teachers." *Id.*

54. *Id.*

55. *Id.*

56. Accommodations were limited because "investors didn't want to build grand facilities that would sit idle nine months of the year." *Id.*

57. *Id.*

58. CERVENY, *supra* note 24, at 19.

59. *See id.*

60. *Id.*

61. *Id.* at 19–20.

and natural resources.<sup>62</sup> Traveling by sea became the most preferred method to visit the state in the 1970s.<sup>63</sup> By the 1980s, tourism was considered a vital component of Alaska's economy.<sup>64</sup>

### *B. Tourism Today*

Over a century has come and gone since tourists first traveled to Alaska,<sup>65</sup> yet the Last Frontier continues to draw visitors from all over the world.<sup>66</sup> Today, cruising continues to be the dominant mode of travel to Alaska.<sup>67</sup> Several major cruise lines offer trips to the state.<sup>68</sup> These large ships carry thousands of passengers at a time.<sup>69</sup> Usually, cruise lines depart from Seattle, Washington, or Vancouver, British Columbia.<sup>70</sup> The Inside Passage, stretching 500 miles along Alaska's southeastern coast, is the most frequented cruise route in the state.<sup>71</sup> Prominent stops along this passageway "include[] Juneau, Ketchikan, Petersburg, Sitka, Skagway, Wrangell, and Glacier Bay National Park and Preserve."<sup>72</sup>

The cruise tourism industry continues to play a significant role in Alaska's economy.<sup>73</sup> Tourism is Alaska's third-largest

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62. *Id.* at 20; Mark Pulliam, *Alaska: America's Last Frontier*, L. & LIBERTY (Aug. 2, 2018) <https://lawliberty.org/alaska-americas-last-frontier/> [https://perma.cc/TR5B-GFRM].

63. CERVENY, *supra* note 24, at 20.

64. *Id.* at 1.

65. *A Century of Cruising*, *supra* note 32; Haycox, *supra* note 32.

66. See *USA Bucket List: BEST Places to Visit in the USA*, *supra* note 12; ALASKA TRAVEL INDUS. ASS'N, 2022-23 ANN. REP. 12 (2023), <https://www.alaskatia.org/sites/default/files/2024-01/22-23%20Annual%20Report.pdf> [https://perma.cc/69DS-4BD2] [hereinafter 2022-23 ANNUAL REPORT].

67. *Getting to & Around Alaska: By Cruise*, *supra* note 14.

68. Some popular cruise lines that offer Alaskan cruises include Disney Cruise Line, Royal Caribbean International, and Norwegian Cruise Line. *Best Cruises to Alaska*, U.S. NEWS & WORLD REP., <https://travel.usnews.com/cruises/best-cruise-ships/alaska/> [https://perma.cc/VSW4-LV64] (last visited Dec. 29, 2025).

69. *See id.*

70. *Getting to & Around Alaska: By Cruise*, *supra* note 14.

71. See *Inside Passage Region*, TRAVEL ALASKA, <https://www.travelalaska.com/destinations/regions/inside-passage> [https://perma.cc/EK58-FELV] (last visited Dec. 29, 2025).

72. *Id.*

73. 2022-23 ANNUAL REPORT, *supra* note 66, at 6, 12; *Exploring Alaska's Top Industries*, *supra* note 15.

industry, behind oil and gas, and fishing and seafood.<sup>74</sup> In 2022, the state's gross domestic product ("GDP")<sup>75</sup> was \$63.62 billion, 8% (over \$5 billion) of which came from tourism.<sup>76</sup> According to the Alaska Travel Industry Association's annual report, the tourism industry supported a total of 48,000 jobs in 2023 and contributed \$5.6 billion to the state's economy throughout the year, including \$3.9 billion from direct consumer spending.<sup>77</sup>

In Juneau alone, cruise passengers spent about \$320 million during the summer of 2023.<sup>78</sup> This amount includes spending at retail shops, restaurants and bars, tours, attractions, transportation, and lodging.<sup>79</sup> Such spending created over 3,000 jobs in Juneau, resulting in \$196 million in estimated labor income.<sup>80</sup> Based on these statistics and 2022 Juneau employment rates, cruise-related jobs comprised 18% of residents' employment.<sup>81</sup> Although cruise tourism is valuable to the state's economy, the harmful consequences of overtourism are hard to ignore.<sup>82</sup>

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74. *Exploring Alaska's Top Industries*, *supra* note 15.

75. GDP measures the "value of goods and services a country or state produces." *What Is the Gross Domestic Product (GDP) in Alaska?*, USA FACTS, (<https://usafacts.org/answers/what-is-the-gross-domestic-product-gdp/state/alaska/> [https://perma.cc/GAB7-653E]) (last visited Dec. 29, 2025) (explaining that GDP is "often used to quantify the size of [a country or state's] economy").

76. See *Exploring Alaska's Top Industries*, *supra* note 15; *Tourism Works for Alaska*, ALASKA TRAVEL INDUS. ASS'N, <https://www.alaskatia.org/resources/tourism-works-for-alaska> [https://perma.cc/6PUR-3PTW] (last visited Dec. 29, 2025). In comparison, the oil and gas industry accounted for 35.7% of Alaska's GDP while the fishing and seafood industry made up 10%. *Exploring Alaska's Top Industries*, *supra* note 15.

77. See *Tourism Works for Alaska*, *supra* note 76; 2022–23 ANNUAL REPORT, *supra* note 66, at 12.

78. MCKINLEY RSCH. GRP., ECONOMIC IMPACT OF JUNEAU'S CRUISE INDUSTRY 2023 1, 5 (2024), <https://juneau.org/wp-content/uploads/2024/01/CBJ-Cruise-Impacts-2023-Report-1.22.24.pdf> [https://perma.cc/K4RF-WFBY] [hereinafter MCKINLEY RSCH. GRP., ECONOMIC IMPACT].

79. *Id.* at 2.

80. *Id.* at 1.

81. *Id.* at 9. About 16,300 Juneau residents were employed in 2022. *Juneau, AK*, DATA USA, [https://datausa.io/profile/geo/juneau-ak?redirect=true#:~:text=Employment%20by%20Industries&text=The%20most%20common%20employment%20sectors,Educational%20Services%20\(1%2C597%20people\)](https://datausa.io/profile/geo/juneau-ak?redirect=true#:~:text=Employment%20by%20Industries&text=The%20most%20common%20employment%20sectors,Educational%20Services%20(1%2C597%20people)) [https://perma.cc/PWU2-5W28] (last visited Dec. 29, 2025). Aside from tourism, the largest job industries in Juneau are "[p]ublic [a]dministration (3,493 workers), [h]ealth [c]are [and] [s]ocial [a]ssistance (2,298 workers), and [e]ducational [s]ervices (1,457 workers)." *Id.*

82. See MCKINLEY RSCH. GRP., *supra* note 5, at 3.

### C. Overtourism

Overtourism is a term that has become more popular in recent years, but its origin dates back to at least the 1840s.<sup>83</sup> When too many people visit the same place at once, it negatively impacts their own travel experiences, local communities, and the environment, creating overtourism.<sup>84</sup> What amounts to “too many people” is subjective because it varies from place to place, but the number should take environmental, economic, and social factors into consideration.<sup>85</sup> Negative effects of overtourism include overcrowding and congestion, wear and tear, community resentment, competition for resources, and environmental damage.<sup>86</sup> In other words, overtourism is “when we love a destination to death.”<sup>87</sup>

Overtourism is very prevalent in Southeast Alaska, largely due to the rise in cruise ship capacity and lack of government planning and regulation to control the growth of tourism.<sup>88</sup> In a survey conducted by Juneau regarding the city’s 2023 cruise season, surveyors asked residents what kind of impact they felt the tourism industry had on their household.<sup>89</sup> The survey

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83. Solomon, *supra* note 17, at 209. Between 2000 and 2019, international tourism rates more than doubled. *What Is Overtourism and Why Is It a Problem?*, *supra* note 18. This rate decreased with the COVID-19 pandemic in 2020 but rebounded once travel bans were lifted. *Id.* In 2024, many destinations saw more international tourists than in the years prior to the pandemic. Benedict Evans, *UN Stats Show Int’l Travel Hit 99% of Pre-Pandemic Levels in 2024*, TR BUS. (Jan. 28, 2025, at 16:05 GMT), <https://www.trbusiness.com/regional-news/international/un-stats-show-international-travel-hit-99-of-pre-pandemic-levels-in-2024/262564> [https://perma.cc/XBH8-TFHA].

84. See Solomon, *supra* note 17, at 208–09; Perkumienė & Pranskūnienė, *supra* 17, at 6; Leahy, *supra* note 18; Brajcich, *supra* note 18.

85. See Solomon, *supra* note 17, at 208–09; Perkumienė & Pranskūnienė, *supra* note 17, at 6; Leahy, *supra* note 18; Brajcich, *supra* note 18.

86. Brajcich, *supra* note 18.

87. *Id.*

88. CERVENY, *supra* note 24, at 1 (“The startling increase in Alaska cruise ship capacity and the lack of governing structures or institutions engaged in planning or regulation have enabled tourism to grow in a largely unregulated fashion, with significant implications for the sustainability of Alaska’s communities and public lands and resources.”).

89. MCKINLEY RSCH. GRP., *supra* note 5, at 1.

consisted of 517 randomly selected residents.<sup>90</sup> Thirty-one percent of respondents reported a positive impact, while 11% answered in the negative.<sup>91</sup> Compared to 2022 survey responses to the same question, the number of respondents who reported a positive impact decreased by 4%, while the number of “negative impact” answers increased by 4%.<sup>92</sup> These results suggest that residents’ views of tourism have soured over time.<sup>93</sup>

As one longtime Juneau resident put it: “There are many of us in Juneau who are very much pro-tourism and believe that the cruise ship industry has gone well beyond the saturation point of being mutually beneficial—being to the detriment of both the visitor and resident.”<sup>94</sup> Locals are primarily concerned with crowding and congestion.<sup>95</sup> For example, residents complain of traffic congestion and overcrowding on public buses, which interfere with their daily commutes.<sup>96</sup> Aside from the disruption of everyday life, other important issues include environmental damage, along with economic and sociocultural impacts.<sup>97</sup>

### 1. *Environmental damage caused by large cruise ships*

Environmental damage is arguably the most compelling reason for state regulation of cruise tourism because of the unique environmental issues that Alaska faces.<sup>98</sup> Some Alaskan

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90. *Id.*

91. *Id.* Forty-six percent of respondents experienced both positive and negative impacts, and 11% reported no impact. *Id.*

92. *Id.* at 2.

93. *See id.*

94. Hallam, *supra* note 17.

95. *See* MCKINLEY RSCH. GRP., *supra* note 5, at 2; Stremple, *supra* note 22; Hallam, *supra* note 17.

96. MCKINLEY RSCH. GRP., *supra* note 5, at 28.

97. *Id.* at 28–29.

98. Environmentalists have pushed for regulation of large cruise ships in Alaskan waters since at least 1981. *See* Samantha S. Marrin, Note, *Rough Seas Ahead for Alaska Cruises? The Judicial and Legislative Battle Over Glacier Bay*, 13 FORDHAM ENV'T L.J. 323, 324–25 (2002); *The Arctic, Alaska, and Climate Change*, U.S. ENV'T PROT. AGENCY (Mar. 27, 2025), <https://www.epa.gov/climateimpacts/arctic-alaska-and-climate-change> [https://perma.cc/KH9K-WEWH].

regions are “warming nearly three times faster than the rest of the” world.<sup>99</sup> The majority of its land is “national parks, national forests, and wildlife refuges.”<sup>100</sup> Climate change has a profound impact on Alaska, including melting sea ice and glaciers, thawing permafrost,<sup>101</sup> increasing the frequency of intense weather events,<sup>102</sup> acidifying oceans,<sup>103</sup> and warming oceans.<sup>104</sup> Mendenhall Glacier, a popular tourist attraction in Juneau, exemplifies these effects.<sup>105</sup> The glacier is expected to fully recede by 2050,<sup>106</sup> incentivizing tourists to visit before it is too late.<sup>107</sup>

These changes adversely affect not only the environment, but also the communities that call the region home.<sup>108</sup> For instance, some Alaska Native communities have been forced to relocate due to erosion and thawing permafrost.<sup>109</sup> Overtourism exacerbates the effects of climate change by contributing to waste, air pollution, noise pollution, and by harming wildlife—destroying the very environment that draws tourists to Alaska

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99. *The Arctic, Alaska, and Climate Change*, *supra* note 98.

100. *Id.*

101. Permafrost is a “rock or soil that remains at or below the freezing point of 32°F for two or more years.” *Climate Change Indicators: Permafrost*, U.S. ENV’T PROT. AGENCY (Apr. 18, 2025), <https://www.epa.gov/climate-indicators/climate-change-indicators-permafrost> [<https://perma.cc/EU4W-EVLF>].

102. *The Arctic, Alaska, and Climate Change*, *supra* note 98.

103. Ocean acidification refers to “changes in the chemistry of the ocean that relate to the amount of carbon dioxide dissolved in the water.” *Climate Change Indicators: Ocean Acidity*, U.S. ENV’T PROT. AGENCY (Jan. 15, 2025), <https://www.epa.gov/climate-indicators/climate-change-indicators-ocean-acidity> [<https://perma.cc/W3DW-TXBX>].

104. *The Arctic, Alaska, and Climate Change*, *supra* note 98.

105. *Mendenhall Glacier*, ALASKA.ORG, <https://www.alaska.org/detail/mendenhall-glacier> [<https://perma.cc/HS8G-7T4V>] (last visited Dec. 29, 2025); Heather Feeney, *Challenge & Opportunity: 1952 and 2022*, BUREAU OF LAND MGMT. (June 9, 2023), <https://www.blm.gov/blog/2023-06-09/challenge-opportunity-1952-and-2022> [<https://perma.cc/U2LQ-523X>].

106. Feeney, *supra* note 105.

107. *See id.*; Associated Press, *Tourists travel to Alaska Hoping to See Glaciers Before They Melt*, SCRIPP NEWS (Sep. 5, 2023, at 18:31 ET), <https://www.scrippsnews.com/science-and-tech/tourists-travel-to-alaska-hoping-to-see-glaciers-before-they-melt#:~:text=Mendenhall%20Glacier%20is%20expected%20to,it%20before%20it's%20gone%20forever.&text=%22If%20you%20have%20eyes%2C%20you,said%20Alaska%2Dbased%20Serene%20Hutchinson> [<https://perma.cc/38ZS-YAQ4>].

108. *The Arctic, Alaska, and Climate Change*, *supra* note 98.

109. *Id.*

in the first place.<sup>110</sup> Large cruise ships are particularly harmful to the environment, so much so that Alaska passed a series of laws creating a state program to regulate cruise ship pollution.<sup>111</sup> However, decades later, the state's environment still feels the effects of these "floating cities."<sup>112</sup>

Large cruise ships create specific harms to the environment.<sup>113</sup> For example, large cruise ships are infamous for illegally dumping wastewater, both intentionally and unintentionally.<sup>114</sup> In 2018, Alaska's Department of Environmental Conservation fined a cruise line \$17,000 after it illegally dumped 22,500 gallons of greywater into Glacier Bay National Park and Preserve.<sup>115</sup> Greywater is wastewater from showers,

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110. See Andrew Engelson, *The Terrible Toll of the Cruise Ship Industry*, HIGH COUNTRY NEWS (Mar. 29, 2023), <https://www.hcn.org/articles/ocean-the-terrible-toll-of-the-cruise-ship-industry#:~:text=In%202019%2C%2014%20cruise%20ships,84%20Olympic%2Dsize%20swimming%20pools.&text=That's%20a%20concern%20for%20commercial,color%E2%80%9D%20in%20the%20ship's%20wake> [https://perma.cc/5JPV-HLR6].

111. See Stephen Thomas, Jr., *State Regulation of Cruise Ship Pollution: Alaska's Commercial Passenger Vessel Compliance Program as a Model for Florida*, 13 FLA. STATE. U. J. TRANSNAT'L L. & POL'Y 533, 536 n.17 (2004) (citing ALASKA STAT. §§ 46.03.460–46.03.490 (Michie 2002)); see also Marrin, *supra* note 98, at 330–31 (discussing strict discharge limits, reporting procedures, and record keeping that cruise ships must follow, enacted by the Alaska state legislature).

112. Thomas, *supra* note 111, at 534. See Engelson, *supra* note 110 (describing cruise ships as "floating hotels"); Eloise Barker, *Overtourism Caused by Large Cruise Ships*, RESPONSIBLE TRAVEL, <https://www.responsiblevacation.com/vacations/small-ship-cruising/travel-guide/cruise-ships-and-overtourism> [https://perma.cc/6MZB-YJSX] (last visited Dec. 29, 2025) (comparing cruise ships to "skyscrapers" given their physical footprint and passenger capacity).

113. See Barker, *supra* note 112.

114. *Cruise Ship Discharges and Studies*, U.S. ENV'T PROT. AGENCY (Feb. 2, 2017), [https://19january2021snapshot.epa.gov/vessels-marinas-and-ports/cruise-ship-discharges-and-studies\\_.html](https://19january2021snapshot.epa.gov/vessels-marinas-and-ports/cruise-ship-discharges-and-studies_.html) [https://perma.cc/NP2R-PZVT]. Cruise ships do not need permits to dump wastewater. Marrin, *supra* note 98, at 326–27. Under federal law, cruise ships are not allowed to dispose of wastewater within three miles of the shore, but they still do so in international waters. *Id.*; see also Asia N. Wright, *Southern Exposure: Managing Sustainable Cruise Ship Tourism in Antarctica*, 39 CAL. W. INT'L L.J. 43, 58 (2008) (explaining the several categories of cruise ship waste, including "sewage, gray water, air emissions, hazardous waste, solid waste, ballast water, and oily bilge water").

115. See Letter from Edward White, Env't Program Manager, Alaska Dep't of Env't Conservation, to Jim Peschel, Senior Dir. for Env't Operations, Holland Am. Line (Nov. 28, 2018), <https://kcaaw-org.s3.amazonaws.com/wp-content/uploads/2019/09/2018-Westerdam-Unauthorized-Graywater-Discharge-NOV.pdf> [https://perma.cc/4MWY-HX9U]; Jim Walker, *Alaska Fines HAL \$17,000 After Westerdam Discharges 22,500 Gallons of Grey Water into Glacier Bay National Park*, CRUISE LAW NEWS (Sep. 11, 2019),

baths, laundry facilities, spas, and pools.<sup>116</sup> This type of waste contains substances like detergents and soaps, pharmaceuticals, chemicals, oil and grease, and dental and medical waste.<sup>117</sup> Greywater discharge is dangerous because its toxins poison sea creatures, cause oxygen depletion, spread bacteria, and increase levels of nutrients in the ocean, resulting in harmful algal blooms and dead zones.<sup>118</sup> This is particularly troubling given that even small cruise ships “can produce several tons of waste each day.”<sup>119</sup>

Cruise ships also release scrubber discharge, which is another type of wastewater.<sup>120</sup> To comply with federal and state emission regulations, many cruise ships use “exhaust gas cleaning system technology” called “scrubbers.”<sup>121</sup> Scrubbers are designed to remove pollutants, like sulfur, from exhaust gas.<sup>122</sup> However, this process shifts pollutants from the air to the water, which is toxic to ocean life and birds.<sup>123</sup> Despite these mitigation efforts, large cruise ships still cause air pollution.<sup>124</sup> On a daily basis, a single cruise ship can produce “the same amount

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<https://www.cruiselawnews.com/2019/09/articles/pollution/alaska-fines-hal-17000-after-westerdam-discharges-22500-gallons-of-grey-water-into-glacier-bay-national-park/>  
[<https://perma.cc/N47E-JMY6>].

116. See Marrin, *supra* note 98, at 329; Wright, *supra* note 114, at 58–59. *What Is Gray Water?*, FRIENDS OF THE EARTH (May 18, 2022), <https://foe.org/blog/what-is-gray-water/> [<https://perma.cc/T8RP-8MRT>].

117. *What Is Gray Water?*, *supra* note 116.

118. “Dead zones are low-oxygen . . . areas [in which] few organisms can survive.” *Dead Zone*, NAT’L GEOGRAPHIC, <https://education.nationalgeographic.org/resource/dead-zone/> [<https://perma.cc/DV6D-XY5V>] (last visited Jan. 9, 2026); *What Is Gray Water?*, *supra* note 116.

119. Wright, *supra* note 114, at 58.

120. Engelson, *supra* note 110.

121. Ved P. Nanda, *U.S. Perspective on the Legal Aspects of Cruises*, 66 AM. J. COMP. L. 213, 227 (2018); *Cruise Ship Air Questions*, ALASKA DEP’T OF ENV’T CONSERVATION, <https://dec.alaska.gov/water/cruise-ships/egcs/> [<https://perma.cc/PC7E-6V3J>] (last visited Dec. 29, 2025).

122. See Nanda, *supra* note 121, at 227; *Cruise Ship Air Questions*, *supra* note 120; Engelson, *supra* note 110.

123. Engelson, *supra* note 110.

124. Barker, *supra* note 112.

of nitrous oxide [emissions] as 30,000 trucks.”<sup>125</sup> To make matters worse, most cruise ships use “cheap[,] heavy oil.”<sup>126</sup> This type of air pollution, including burning fuel, contributes to climate change.<sup>127</sup>

Moreover, large cruise ships and tourists’ activities are harmful to whales.<sup>128</sup> For instance, cruise engines are so loud that they interfere with whales’ ability to echolocate prey.<sup>129</sup> Whale-watching is a popular attraction among cruise passengers.<sup>130</sup> Despite regulations requiring boats to keep their distance, whale-watching tours disturb and stress the creatures, and occasionally result in vessel strikes.<sup>131</sup> Whale calves are especially vulnerable to these accidents.<sup>132</sup> Wastewater discharge also hurts whales, as ships are permitted to dump their sewage in international waters, including pockets of international waters in Glacier Bay, where whales feed.<sup>133</sup> This is alarming given that several endangered species of whales migrate to Alaska each year between May and September, which is peak cruise season.<sup>134</sup>

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125. *Id.* A non-profit organization discovered this statistic after residents of Amsterdam began complaining of emissions from a nearby cruise ship. See JASPER FABER & ANNE KLEIJN, EMISSIONS OF THE MARELLA DISCOVERY 4, 8 (2021), [https://cedelft.eu/wp-content/uploads/sites/2/2021/05/CE\\_Delft\\_210101\\_Emissions\\_of\\_the\\_Marella\\_Discovery\\_Def.pdf](https://cedelft.eu/wp-content/uploads/sites/2/2021/05/CE_Delft_210101_Emissions_of_the_Marella_Discovery_Def.pdf) [https://perma.cc/HGR6-8SMY].

126. *Community Impact*, HUM. RTS. IN TOURISM, <https://www.humanrights-in-tourism.net/card/136> [https://perma.cc/CC3M-UM72] (last visited Dec. 29, 2025).

127. See Wright, *supra* note 114, at 60.

128. See Marrin, *supra* note 98, at 326; Nathan Diller, ‘*What Is Our Limit?*’: How Cruise Ships Are Impacting Alaska’s Environment, USA TODAY (Feb. 9, 2025, at 12:43 ET), <https://www.usatoday.com/story/travel/cruises/2025/02/02/alaska-cruises-environmental-impacts-juneau-ketchikan/77543207007/> [https://perma.cc/38D2-ERJH].

129. See Marrin, *supra* note 98, at 326 (explaining that humpback whales “utilize[] sounds in order to function”); Engelson, *supra* note 110.

130. Diller, *supra* note 128.

131. *Id.*; see also Marrin, *supra* note 98, at 326 (citing an incident where a vessel strike was believed to have caused the death of a pregnant whale).

132. Diller, *supra* note 128.

133. See Marrin, *supra* note 98, at 327.

134. See *Federally Listed Threatened and Endangered Species in Alaska*, ALASKA DEP’T OF FISH & GAME, <https://www.adfg.alaska.gov/index.cfm?adfg=wildlifediversity.esalisted> [https://perma.cc/W7KP-L5J2] (last visited Dec. 29, 2025); *Everything You Need to Know About Whales in Alaska*, ALASKA COLLECTION, <https://www.alaskacollection.com/day-tours/kenai>.

## 2. Economic impact

Although tourism industry plays a crucial role in sustaining Alaska's economy, overtourism poses considerable economic consequences for local businesses and residents.<sup>135</sup> For example, overtourism exacerbates housing shortages in Southeast Alaska.<sup>136</sup> In a 2024 survey, regional businesses identified housing as the "top obstacle" to success and growth.<sup>137</sup> Due to the high cost of living in the area,<sup>138</sup> local businesses struggle to retain employees because people cannot afford to live there.<sup>139</sup> Workers have difficulty finding not only short-term housing but also affordable long-term housing.<sup>140</sup> During the summer months, this is of particular concern because of a heightened need for employees, creating a paradox where the region relies on summer tourism, yet tourists take up the short-term rentals that seasonal workers need.<sup>141</sup>

The seasonal nature of Southeast Alaska's economy is another concern for locals.<sup>142</sup> The tourism industry offers relatively few opportunities for consistent, year-round employment.<sup>143</sup> Jobs within this industry tend to be low-wage, hourly positions

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fjords-tours/stories/everything-you-need-to-know-about-whales-in-alaska/ [https://perma.cc/Q9QT-7WF6] (last visited Dec. 29, 2025).

135. See ALASKA TRAVEL INDUS. ASS'N, *supra* note 66, at 12; *Southeast Alaska Business Climate 2024*, RAIN COAST DATA 1 (2024), <https://www.seconference.org/wp-content/uploads/2024/07/Southeast-Alaska-Business-Climate-2024.pdf> [https://perma.cc/5TDM-HVGS].

136. See Angela Denning, *Housing Identified as Top Problem for Southeast Alaska Businesses*, KTOO (July 19, 2022), <https://www.ktoo.org/2022/07/19/housing-identified-as-top-problem-for-southeast-alaska-businesses/> [https://perma.cc/T7HT-JMLC].

137. *Southeast Alaska Business Climate 2024*, *supra* note 135, at 1.

138. Alaska's cost of living is "33% higher than the national average." *Cost of Living in Alaska*, RENTCAFE, <https://www.rentcafe.com/cost-of-living-calculator/us/ak/> [https://perma.cc/GN7C-DXNZ] (last visited Dec. 29, 2025). This is due to its size, harsh weather conditions, and isolation from the rest of the continental U.S., which makes distribution of goods and services more expensive. See John Boucher, *Measuring Alaska's Cost of Living*, ALASKA ECON. TRENDS, June 1997, at 7. For a recent issue, see *The Cost of Living in Alaska*, ALASKA ECON. TRENDS, July 2025, at 7–9.

139. Denning, *supra* note 136.

140. *Id.*

141. *Id.*

142. See CERVENY, *supra* note 24, at 68.

143. *Id.*

like store clerks, tour guides, and bus drivers, rather than salaried positions.<sup>144</sup> Residents express that these seasonal jobs “do[] not put food on the table for most people,” and instead benefit “kids and migrant workers.”<sup>145</sup>

Likewise, in popular ports like Ketchikan, Juneau, and Skagway, outside corporations often reap the bulk of the profits of the tourism industry.<sup>146</sup> Nonlocal businesses take advantage of the market by opening chain stores owned by cruise lines, and by buying out family-owned businesses like hotels and tour operations.<sup>147</sup> Many of these stores gear their merchandise towards tourists and are “boarded up in the off-season.”<sup>148</sup> Outside corporations detract from Southeast Alaska’s local economy because many seasonal business owners only stay for the summer, spending their earnings elsewhere in the off-season.<sup>149</sup>

### 3. *Sociocultural impact*

Overtourism not only strains tourist-local relationships, but it also reshapes residents’ perceptions of their own communities.<sup>150</sup> Some locals, especially young people who enjoy interacting with new ideas and experiences, look forward to cruise season.<sup>151</sup> However, for many residents, the presence of tourists raises concerns about both safety and privacy.<sup>152</sup> In communities with few permanent residents, being around so many strangers can feel unsettling.<sup>153</sup> Locals report feeling as though tourists pass judgment about their lifestyle and homes based on

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144. *Id.*

145. *Id.*

146. *See id.* at 71, 78.

147. *Id.* at 71.

148. *Id.* at 78; Sabbatini, *supra* note 3.

149. As one resident explained, nonlocal business owners “come for the summer and take their money out of here, they spend it somewhere else. They don’t pay taxes. They come up here and feed off the tourists.” *See* CERVENY, *supra* note 24, at 73.

150. *See id.* at 78.

151. *See id.* at 78–79.

152. *Id.*

153. *Id.* at 79.

the physical appearance of their communities.<sup>154</sup> Others liken their experience to that of a zoo animal.<sup>155</sup> Residents describe the feeling of “living in a fishbowl, with everyone watching [them],” as if their “community [is] on display for tourist consumption.”<sup>156</sup> When communities transform into tourist destinations, “[t]he place begins to become strange to the people who live [t]here.”<sup>157</sup>

On a more positive note, tourism provides a way for Alaska Natives to share their culture with visitors.<sup>158</sup> For example, Icy Strait Point is a port that “allow[s] visitors to see a living Native community” and “to learn about Native lifestyle” through tribal dances and storytelling.<sup>159</sup> By doing so, Alaska Natives pass down knowledge through generations and revitalize their culture, where that knowledge otherwise may have been lost.<sup>160</sup> Sharing their heritage is a source of pride and joy for many Natives, but some are hesitant to share it with outsiders, worried it will be exploited.<sup>161</sup> Some Natives fear that the tourism industry commercializes and undermines the authenticity of their cultural heritage.<sup>162</sup>

In summary, Southeast Alaska welcomes tourism for its positive contribution to the state and local economies;<sup>163</sup> however, too much tourism takes its toll on both residents and the physical environment.<sup>164</sup> All of these issues deserve

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154. *Id.* at 80–81.

155. CERVENY, *supra* note 24, at 80.

156. *Id.*

157. *Id.* at 89.

158. See JENNIFER HOLLAND, GOING AGAINST THE “FLOE”: POWER RELATIONS AND CRUISE TOURISM DEVELOPMENT AT ICY STRAIT POINT, 2021 TRAVEL & TOURISM RSRCH. ASS’N INT’L CONF. 15 (2021).

159. *Id.*

160. *See id.*

161. CERVENY, *supra* note 24, at 87.

162. *See id.*; see also HOLLAND, *supra* note 158, at 15 (describing the Icy Strait Point port’s shift away from tours that aimed to preserve Indigenous culture to commercialized ones).

163. 2022–23 ANNUAL REPORT, *supra* note 73, at 12.

164. *See* MCKINLEY RSRCH. GRP., *supra* note 5, at 28–29.

consideration, but managing environmental damage takes precedence, given that Alaska is already plagued by the effects of climate change, which are intensified by large cruise ships.<sup>165</sup> To remedy overtourism, state legislators must strike a balance between the state's economic needs and the need to address the harms caused by overtourism.<sup>166</sup> State legislators must act to protect both local communities and preserve Alaska's already vulnerable environment, thereby safeguarding the very reasons why tourists love Alaska.

## II. SOUTHEAST ALASKA'S CURRENT CRUISE RESTRICTIONS

Over the past few years, Southeast Alaska city assemblies and residents have attempted to regulate cruise ships to combat overtourism.<sup>167</sup> For instance, Juneau city officials entered into memoranda of agreement with cruise lines to limit the number of ships and passengers in the city.<sup>168</sup> Residents of Sitka attempted to impose similar restrictions but were unsuccessful.<sup>169</sup> Such regulations have been met with backlash from both locals who feel that city legislators are not doing enough and actors within the tourism industry who argue that legislators have overstepped, violating the United States Constitution.<sup>170</sup>

### A. Juneau, Alaska

Juneau's cruise restrictions stem from residents' frustration over increased tourism.<sup>171</sup> On its busiest days, the city is flooded

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165. See *The Arctic, Alaska, and Climate Change*, *supra* note 98; Marrin, *supra* note 98, at 329; Wright, *supra* note 114, at 59–60.

166. See *infra* Part III.B.

167. See Stremple, *supra* note 22.

168. See 2023 Juneau MOA, *supra* note 23.

169. See Sitka Memo, *supra* note 28; Stremple, *supra* note 22.

170. See Sitka Memo, *supra* note 28; Stremple, *supra* note 22.

171. La'shawn Donelson, *Juneau Limits Tourists and Cruise Ships as Residents Grow Frustrated*, YOUR ALASKA LINK (June 5, 2024), [https://www.youralaskalink.com/homepage/juneau-limits-tourists-and-cruise-ships-as-residents-grow-frustrated/article\\_e05dd00c-22db-11ef-91f5-7717dc7f9a49.html](https://www.youralaskalink.com/homepage/juneau-limits-tourists-and-cruise-ships-as-residents-grow-frustrated/article_e05dd00c-22db-11ef-91f5-7717dc7f9a49.html) [https://perma.cc/6FMP-LNZE].

with as many as 21,000 visitors.<sup>172</sup> Ahead of the 2023 cruise season, the city entered into a memorandum of agreement<sup>173</sup> with popular cruise lines to limit the number of ships visiting the city to a maximum of five per day.<sup>174</sup> Aside from a passenger fee enacted in 1999,<sup>175</sup> there were no limitations in place.<sup>176</sup> The memorandum of agreement was barely in effect for a month before Juneau imposed further restrictions.<sup>177</sup> In May 2024, the city facilitated another memorandum of agreement, limiting port calls to 16,000 passengers per day on Sundays through Fridays and 12,000 on Saturdays.<sup>178</sup> However, this agreement will not go into effect until the 2026 cruise season.<sup>179</sup>

Still, residents demand more.<sup>180</sup> In October 2024, during Juneau's municipal election, citizens voted on whether to pass an initiative known as Ship-Free Saturdays.<sup>181</sup> This proposal would have prevented cruise ships with 250 or more passengers from

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172. “[O]ur busiest days that we’ve had have felt a bit suffocating for a lot of people, and we’re trying to eliminate that and create some balance for the community,” explained Alexandra Pierce, Juneau’s Visitor Industry Director. *Id.* Juneau’s mayor created the Visitor Industry Task Force in 2019 to address overtourism and promote public process. *Id.*

173. A memorandum of agreement is a formal business document that outlines an agreement made between parties. *Memorandum of Agreement: What Is It and What to Include*, CONTS. COUNS., <https://www.contracts counsel.com/t/us/memorandum-of-agreement#toc—is-a-memorandum-of-agreement-legally-binding-and-enforceable-> [https://perma.cc/4SF4-93X5] (last visited Dec. 29, 2025).

174. This agreement did not go into effect until the 2024 cruise season. *2023 Juneau MOA*, *supra* note 23.

175. In 1999, Juneau imposed a \$5-per-passenger fee on maritime passenger ships. In 2016, the Cruise Lines International Association sued the city over the fees and eventually settled the suit in 2019. Julie Jacobs, *Keeping Cruises at Bay: Whether Port Cities Violate the Dormant Commerce Clause and Federal Maritime Law*, 100 CHI.-KENT L. REV. 397, 402 (2025) (citing CITY AND BOROUGH OF JUNEAU, ALASKA, CODE OF ORDINANCES 69.20.005).

176. *See id.*

177. *See id.*; *2024 Juneau MOA*, *supra* note 23.

178. *See 2024 Juneau MOA*, *supra* note 23.

179. According to the memorandum, “[a]ll discussions relating to the ship schedules will take place two years in advance.” *Id.*

180. *See* Mark Sabbatini, *Ballot Propositions 2: Ship-Free Saturday*, JUNEAU EMPIRE (Sep. 10, 2024, at 15:01 ET), <https://www.juneauempire.com/news/ballot-propositions-2-ship-free-saturday/> [https://perma.cc/H468-DG5A].

181. *Id.*

docking in Juneau on Saturdays, but it was not adopted.<sup>182</sup> Supporters of the bill worried that the city's current restrictions would not relieve overcrowding and congestion because on days with fewer than 16,000 visitors, residents are still "overwhelmed with impacts."<sup>183</sup>

On the other hand, opponents of the bill were concerned that the ban would "endanger[] the economic stability of [the] community."<sup>184</sup> The bill's primary opponent was a group called Protect Juneau's Future.<sup>185</sup> The chair of this group is the president and CEO of Goldbelt Incorporated, which is an Alaska Native corporation that owns tourist attractions in Juneau.<sup>186</sup> Perhaps unsurprisingly, one of Protect Juneau's Future's largest donors was the Royal Caribbean, which is a popular cruise line.<sup>187</sup> The Royal Caribbean also sent a letter threatening to sue the city if Ship-Free Saturdays passed.<sup>188</sup> In the past, cruise lines have reacted similarly to threats of state regulation, shortening time spent at ports and cutting off charitable donations, yet none completely abandoned trips to Alaska.<sup>189</sup>

The day after the Ship-Free Saturdays proposal was rejected, Goldbelt and Royal Caribbean issued a joint press release announcing a partnership to build a new cruise ship port on Douglas Island, which is part of Juneau.<sup>190</sup> Many residents, disappointed by the announcement, accused Goldbelt and Royal

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182. *Id.*; Clarise Larson, *Voters Sank Ship Free Saturdays, But Juneau's Debate over Tourism Is Far from Over*, KTOO (Oct. 17, 2024) [hereinafter *Voters Sank Ship Free Saturdays*], <https://www.ktoo.org/2024/10/17/voters-sank-ship-free-saturdays-but-juneaus-debate-over-tourism-is-far-from-over/> [https://perma.cc/9DDF-MCUG].

183. Sabbatini, *supra* note 180; Stremple, *supra* note 22.

184. Sabbatini, *supra* note 180.

185. See *Voters Sank Ship Free Saturdays*, *supra* note 182.

186. *Id.*; Larson, *supra* note 25.

187. See *Voters Sank Ship Free Saturdays*, *supra* note 182.

188. *Id.*

189. Alaska voters have attempted to regulate cruise tourism in the past, like passing a passenger tax that "imposed an 'environmental compliance fee' on every commercial passenger vessel sailing in Alaskan waters." Marrin, *supra* note 98, at 336–37. As a result, one cruise line stopped contributing to charitable and civic organizations in Juneau. *Id.* at 337.

190. Press Release: Goldbelt Signs with Royal Caribbean, *supra* note 25.

Caribbean of being “tone-deaf.”<sup>191</sup> Even Juneau’s mayor expressed her dismay, describing the announcement as a “slap in the face” because the partnership failed to provide notice of its plans to the city.<sup>192</sup> Similarly, Alexandra Pierce, Juneau’s Visitor Industry Director, said, “[w]e were unaware of this plan and are disappointed that they did not bring the city to the table early in the planning process.”<sup>193</sup> This news only reinforces the argument that Alaska state legislators must act to mitigate overtourism now.<sup>194</sup>

#### *B. Sitka, Alaska*

Residents of Sitka, another Southeast Alaska city along the Inside Passage, also push for regulations on cruise ships.<sup>195</sup> In 2024, residents launched an initiative to limit the number of cruise ship passengers visiting the city per year.<sup>196</sup> Like Juneau, Sitka has experienced an influx in cruise ship passengers.<sup>197</sup> In the past, large cruise ships anchored offshore and tendered passengers to smaller docks.<sup>198</sup> But in 2022, a private company developed a cruise terminal, which doubled the number of passengers that Sitka had historically seen from roughly 200,000 to 400,000 tourists per year.<sup>199</sup> That is fifty times more tourists than

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191. See *Voters Sank Ship Free Saturdays*, *supra* note 182.

192. Larson, *supra* note 25.

193. Dawit Habtemariam, *Royal Caribbean to Open New Juneau Port After Vote Against Cruise Restrictions*, SKIFT (Oct. 18, 2024, at 16:58 ET), <https://skift.com/2024/10/18/royal-caribbean-to-open-new-juneau-port-after-vote-against-cruise-restrictions/> [<https://perma.cc/3GM5-L2Q9>].

194. See *Voters Sank Ship Free Saturdays*, *supra* note 182; Larson, *supra* note 25.

195. See *About Sitka*, CITY OF SITKA, <https://www.cityofsitka.com/about-sitka> [<https://perma.cc/5A7J-PMZC>] (last visited Dec. 29, 2025); *Sitka, a Small Town in Alaska, Resoundingly Rejects Cruise Ship Limits*, THE MAR. EXEC. (May 29, 2025, at 21:19 ET), <https://maritime-executive.com/article/sitka-a-small-town-in-alaska-resoundingly-rejects-cruise-ship-limits> [<https://perma.cc/Y3YG-HHV5>].

196. Sitka Memo, *supra* note 28.

197. *Id.*

198. *Id.*

199. See Andrea Zelinski, *Alaska’s Cruise Conundrum*, TRAVEL WEEKLY (Sept. 16, 2024), <https://www.travelweekly.com/Cruise-Travel/Alaska-cruise-conundrum> [<https://perma.cc/X68D-U9CC>]. By the following year in 2023, Sitka saw 585,000 passengers, more than double the city’s historical record. *Id.*

the 8,000 residents living in Sitka.<sup>200</sup> This statistic suggests that a new private cruise terminal in Juneau may have a similar effect on the already overburdened city.<sup>201</sup>

In June 2024, Sitka residents proposed a ballot initiative limiting cruise passengers to 300,000 per year, and a maximum of 4,500 per day.<sup>202</sup> However, the city rejected the proposal, making it the third failed citizen initiative since September 2023.<sup>203</sup> This proposal would have required cruise lines to take part in a draft-style scheduling conference to receive port call authorizations.<sup>204</sup> Then, ships would have had to obtain a permit to dock.<sup>205</sup> Sitka concluded that the ballot initiative should not be certified because “it is unenforceable as a matter of law.”<sup>206</sup> The city also acknowledged constitutional challenges made by cruise lines like Royal Caribbean, along with other actors within the tourism industry, citing the Commerce Clause, constitutional right to travel, the Takings Clause, and the Admiralty Clause.<sup>207</sup> However, the city noted that consideration of these arguments was premature.<sup>208</sup>

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200. *Sitka*, WORLD POPULATION REV.: ALASKA POPULATION 2024, [https://worldpopulationreview.com/us-cities/alaska/sitka#google\\_vignette](https://worldpopulationreview.com/us-cities/alaska/sitka#google_vignette) [<https://perma.cc/2AX5-GSB4>] (last visited Dec. 29, 2025).

201. See Donelson, *supra* note 171; Habtemariam, *supra* note 193.

202. Sitka Memo, *supra* note 28.

203. *Id.*; Katherine Rose, *City Denies Third Application to Put Cruise Limit Question out to Voters*, RAVEN RADIO FOUND. (July 3, 2024), <https://www.kcaw.org/2024/07/03/city-denies-third-application-to-put-cruise-limit-question-out-to-voters/> [<https://perma.cc/GM29-E3CJ>].

204. Sitka Memo, *supra* note 28.

205. *Id.*

206. The city’s attorneys reasoned that the proposal is unenforceable due to “misleading, confusing, and incomplete terms” and because the permit requirement violates the Constitution’s Tonnage Clause. *Id.*

207. *Id.*

208. Sitka’s attorneys explain that for challenges involving “general contentions that the provisions of an initiative are unconstitutional,” the municipal clerk “may only reject a measure ‘if controlling authority leaves no room for argument about its unconstitutionality.’” *Id.* (explaining that stakeholders may need to instead seek judicial resolution for these challenges).

### C. Bar Harbor, Maine

On the other side of the continental United States, Bar Harbor, Maine, faces similar concerns regarding overtourism.<sup>209</sup> Like Juneau, Bar Harbor's town council entered into memoranda of agreement with cruise lines, capping the number of passengers allowed to visit the city per day.<sup>210</sup> In response to residents' continued frustration over congestion, Bar Harbor passed an ordinance reducing the daily cap to 1,000 passengers per day.<sup>211</sup> Local business owners and other actors in the tourism industry responded to the new ordinance by suing the town, alleging that the ordinance is unconstitutional under the Dormant Commerce Clause.<sup>212</sup> In 2024, the federal court for the District of Maine held that the ordinance did not violate the Dormant Commerce Clause, allowing the ordinance to remain in place.<sup>213</sup> In 2025, the First Circuit largely affirmed the district court's decision, but vacated and remanded a portion of it.<sup>214</sup>

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In summary, most Southeast Alaska communities have limited means to protect themselves against overtourism from large cruise ships.<sup>215</sup> While Juneau has memoranda of agreement with cruise lines, limiting the number of cruise ships and passengers that can visit the city, residents' subsequent initiatives to further regulate cruise tourism suggest that these agreements are insufficient to alleviate the needs of the local

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209. See Ass'n to Pres. & Protect Loc. Livelihoods v. Bar Harbor, 721 F. Supp. 3d 56, 70–71 (D. Me. 2024), *aff'd in part, vacated in part, remanded sub nom.*, Ass'n to Pres. & Prot. Loc. Livelihoods v. Sidman, 147 F.4th 40 (1st Cir. 2025).

210. *Id.*

211. *Id.* at 71.

212. Complaint at 23, Bar Harbor, 721 F. Supp. 3d (D. Me. 2024) (No. 1:22cv416).

213. See *Bar Harbor*, 721 F. Supp. 3d at 88–89. The district court's Dormant Commerce Clause holding was recently vacated and remanded by the First Circuit Court of Appeals. Ass'n to Pres. & Protect Loc. Livelihoods v. Sidman, 147 F.4th 40, 70 (1st Cir. 2025).

214. Ass'n to Pres. & Protect Loc. Livelihoods v. Sidman, 147 F.4th 40 (1st Cir. 2025).

215. Notably, in 2021, Skagway's mayor also proposed capping cruise ship passengers, but the idea never made it on the ballot. Stremple, *supra* note 22 (explaining that "the town of fewer than 1,000 residents welcomes as many as 12,000 passengers a day").

community.<sup>216</sup> Following Bar Harbor's lead,<sup>217</sup> state legislators should pass a law regulating cruise tourism across the Southeast Alaska region.

### III. BANNING LARGE CRUISE SHIPS AS A SOLUTION TO OVERTOURISM

Southeast Alaska's current restrictions on cruise tourism—or lack thereof—are not sufficient long-term solutions to overtourism. Even if other Southeast Alaska cities enter into memoranda of agreement like Juneau, these agreements are inadequate.<sup>218</sup> Enacting a law to ban large cruise ships in Southeast Alaska is a more comprehensive solution because it not only reduces overcrowding, but it also diminishes specific harms to the environment caused by large ships.<sup>219</sup> Bar Harbor's recent success at the district court level<sup>220</sup> suggests that, Alaska state legislators legally can and should enact a law limiting the size of cruise ships permitted to dock in Southeast Alaska ports.

#### *A. Memoranda of Agreement Are Inadequate Solutions*

Juneau's 2023 and 2024 memoranda of agreement are insufficient solutions—temporary at best—because they do little to lessen the environmental harms caused by large cruise ships and are difficult to enforce.<sup>221</sup> First, the memoranda of agreement are intended to alleviate overcrowding and not environmental concerns.<sup>222</sup> Overcrowding is certainly a problem for

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216. *See id.*

217. *See Bar Harbor*, 721 F. Supp. 3d at 72.

218. *See infra* Section III.A.

219. *See infra* Section III.B.

220. *See Bar Harbor*, 721 F. Supp. 3d at 78. While this action was vacated and remanded on the portion that rejected the allegations of the ordinance violating the U.S. Constitution's Dormant Commerce Clause, the First Circuit "largely affirm[ed]" most of the district court's ruling. *See Ass'n to Pres. & Protect Loc. Livelihoods v. Sidman*, No. 24-1317, 2025 WL 2304915, \*2–3 (1st Cir. Aug. 11, 2025).

221. *See 2023 Juneau MOA, supra* note 23; *2024 Juneau MOA, supra* note 23.

222. *See id.*; *Stremple, supra* note 22.

residents,<sup>223</sup> and it makes sense that this issue drives restrictions on cruise tourism because the effects of overcrowding—noise, traffic congestion, decreased safety, etc.—impact locals' quality of life.<sup>224</sup> However, given Alaska's unique environmental concerns,<sup>225</sup> reducing the specific harms caused by large cruise ships should be at the forefront of the fight against overtourism.<sup>226</sup> Implementing a cap on passengers and cruise ships is a step in the right direction, but it is not enough to make a meaningful difference for Alaska's environment.<sup>227</sup> Limiting the number of large cruise ships per day may lessen environmental damage, but only a total ban of these ships is sufficient to protect Alaska's already fragile environment.<sup>228</sup>

Next, memoranda of agreement are difficult to enforce because they are neither legal documents nor enforceable in court.<sup>229</sup> Memoranda of agreement are usually used to outline cooperative or collaborative agreements between parties, indicating the parties' good will to adhere to the terms of the agreements.<sup>230</sup> Even though memoranda of agreement could be contracts if they satisfy the legal elements, they are generally not interpreted as contracts.<sup>231</sup> Further, both memoranda of agreement and contracts only exist between the limited number of parties that sign the agreement.<sup>232</sup>

The Alaska state legislature should enact a law banning large cruise ships in Southeast Alaska because, unlike

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223. MCKINLEY RSCH. GRP., *supra* note 5, at 28, 32.

224. *See* Solomon, *supra* note 17, at 208–09.

225. *See supra* Section I.C.1.

226. *See* Marrin, *supra* note 98, at 335–37.

227. *See id.* at 339–40.

228. *See id.*; MCKINLEY RSCH. GRP., *supra* note 5, at 28–32.

229. *See Understanding and Writing Contracts and Memoranda of Agreement*, CMTY. TOOL BOX, <https://ctb.ku.edu/en/table-of-contents/structure/organizational-structure/understanding-writing-contracts-memoranda-agreement/main> [<https://perma.cc/2CLX-833C>] (last visited Jan. 9, 2026).

230. *See id.* (explaining that a memorandum of agreement “won’t stand up in court” and “[y]ou can’t use it—except morally—to hold another organization to what it’s promised”).

231. *See id.*

232. *See id.*

memoranda of agreement, laws apply to everyone and are enforceable in court.<sup>233</sup> This solution is more effective than memoranda of agreement because a law would extend to every Southeast Alaska city and tourism industry actor operating in the region.<sup>234</sup> Currently, only Juneau and certain cruise lines are bound by the memoranda of agreement, while other Southeast Alaska cities are left defenseless.<sup>235</sup> Also, as previously mentioned, Alaska already has state laws regulating cruise ship pollution and waste management, suggesting that the legislature would likely be willing and able to enact a law regulating tourism to protect the environment from further damage caused by large cruise ships.<sup>236</sup>

A law would also be easier to enforce because it would have the weight of the state legislature behind it, meaning the state government would oversee its application and enforcement.<sup>237</sup> On the other hand, if a party wishes to enforce a memorandum of agreement, it must do so in court, and it may not be enforceable anyway.<sup>238</sup> Relying on memoranda of agreement is equivalent to relying on cruise lines to self-regulate, even though they have a conflict of interest.<sup>239</sup> Therefore, state legislators should enact a law limiting the size of cruise ships permitted to dock in Southeast Alaska ports because it is a more comprehensive

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233. *See id.*

234. *See e.g.*, 2023 Juneau MOA, *supra* note 23 (restricting the port city of Juneau).

235. *See* 2023 Juneau MOA, *supra* note 23; 2024 Juneau MOA, *supra* note 23; Stremple, *supra* note 22.

236. *See* Thomas, Jr., *supra* note 111, at 536; Marrin, *supra* note 98, at 330.

237. *See, e.g.*, ALASKA CONT. ART. III, § 16 (“The governor shall be responsible for the faithful execution of the laws. He may . . . enforce compliance with any constitutional or legislative mandate . . .”).

238. *See Understanding and Writing Contracts and Memoranda of Agreement*, *supra* note 229.

239. In her article about managing sustainable cruise tourism in Antarctica, Wright suggests that “the cruise tour operators’ self-interest works as a powerful and effective substitute” to “recognized sovereigns and enforcers.” Wright, *supra* note 114, at 75–76. While it is true that “[t]he cruise industry’s survival depends on keeping the natural environment pristine,” self-regulation would not be an effective solution to overtourism in Alaska due to cruise lines’ threats to pursue litigation in response to citizen initiatives and the development of Royal Caribbean’s new cruise port. *Id.* at 76.

solution than relying on memoranda of agreement between cities and cruise lines.

### *B. Small Cruise Ships as a Sustainable Solution*

Overtourism in Southeast Alaska is primarily due to large cruise ships, which cause specific harms to the environment.<sup>240</sup> It follows, then, to mitigate the negative effects of overtourism, especially environmental damage, Alaska must confront the core of the problem: large cruise ships.<sup>241</sup> Banning these ships is the best solution for Southeast Alaska because it reduces both overcrowding and the environmental harms caused by large cruise ships.<sup>242</sup> This is not to say that cruise tourism should be banned altogether. If state legislators regulate the size of cruise ships, tourists may still explore Alaska through other methods of travel, including small cruise ships.<sup>243</sup> Small cruise ships are an example of sustainable tourism<sup>244</sup> and allow tourists to experience The Last Frontier in the way they likely imagined it.<sup>245</sup> Banning large cruise ships may upset business owners and cruise lines,<sup>246</sup> but preserving Alaska's natural resources is vital

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240. *See supra* Section I.C.1.

241. *See id.*

242. *See* Barker, *supra* note 112.

243. *See* Catherine Mack, *Guide to Small Ship Cruising in Alaska*, RESPONSIBLE TRAVEL, <https://www.responsiblevacation.com/vacations/alaska-cruising/travel-guide> [https://perma.cc/5RXF-CAV8] (last visited Jan. 9, 2026).

244. Sustainable tourism "takes full account of the current and future economic, social[,] and environmental impacts, addressing the needs of visitors, the industry, the environment[,] and host communities." Perkumiené & Pranskūnienė, *supra* note 17, at 10 (citation & internal quotation marks omitted).

245. *See* Iwona Wyszynska-Aldridge, *Sustainable Travel: Why Small Ship Cruises Lead the Way*, SEAFARER CRUISES, <https://seafarercruises.co.uk/news/sustainable-travel-why-small-ship-cruises-lead-the-way/> [https://perma.cc/9C8R-XBMY] (last visited Jan. 9, 2026); Mack, *supra* note 243.

246. Clarise Larson, *Why Some Juneau Residents Want to Ban Cruise Ships on Saturdays—And What's at Stake*, ALASKA PUB. MEDIA (Sep. 27, 2024, at 09:58 AKT) [hereinafter Larson, Juneau], <https://alaskapublic.org/news/2024-09-27/why-some-juneau-residents-want-to-ban-cruise-ships-on-saturdays-and-whats-at-stake> [https://perma.cc/C3PG-JDZ9].

to sustaining the tourism industry and the economy in the long-run.<sup>247</sup>

Many tourists may not be aware that small cruise ships even exist; yet, from a passenger's perspective, they are likely a better option for visiting Alaska than large cruise ships.<sup>248</sup> Small ships are also called expedition ships, a name that embodies the focus and atmosphere of such cruises.<sup>249</sup> Small ships are becoming increasingly popular due to "demands for sustainable, slow tourism and remote, authentic experiences."<sup>250</sup> There are many environmental benefits to choosing small cruise ships, as well as differences in experience that are likely to appeal to Alaska's tourists.<sup>251</sup>

Most importantly, small cruise ships are more environmentally conscious than large cruise ships.<sup>252</sup> Due to the difference in size, small ships generate less emissions and commonly use greener technology—such as hybrid, electric engines, or even sailing in the wind.<sup>253</sup> Small ships also implement on-board conservation initiatives, including eco-friendly waste management

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247. See *Tourism Works for Alaska*, ALASKA TRAVEL INDUS. ASS'N, <https://www.alaskatia.org/resources/tourism-works-for-alaska> [https://perma.cc/6PUR-3PTW] (last visited Sep. 23, 2025) (highlighting the impact of nature-related tourism on Alaska's economy).

248. See Todd Smith, *Big Ship vs Small Ship—What is the Difference?*, ADVENTURESMITH EXPLORATIONS (Feb. 28, 2024), <https://adventuresmithexplorations.com/cruises/ships/small-ship-big-ship-difference/> [https://perma.cc/M7DP-QNZE].

249. *Id.*

250. *Id.*

251. See Wyszynska-Aldridge, *supra* note 245; Mack, *supra* note 243.

252. *The Impact of Small vs. Large Cruise Ships*, OCEANWIDE EXPEDITIONS, <https://oceaniwide-expeditions.com/blog/the-impact-of-small-vs-large-cruise-ships> [https://perma.cc/TKE4-AWGQ] (last visited Jan. 9, 2026). *Contra* Wright, *supra* note 114, at 81. In her article, Wright suggests that large cruise ships are better for the Antarctic environment than small cruise ships. *Id.* The key factor is that large cruise ships are not allowed to disembark onto the continent, whereas small ships are permitted to, increasing the risk that passengers will damage the environment. *See id.* at 82. This argument does not apply to Alaska because both large and small cruise ships are permitted to disembark at ports. *See* Catherine Mack, *Responsible Cruising in Alaska*, RESPONSIBLE TRAVEL, <https://www.responsivetravel.com/vacations/alaska-cruising/travel-guide/responsible-tourism-in-alaska> [https://perma.cc/VY7M-Q3FZ] (last visited Sep. 23, 2025).

253. Wyszynska-Aldridge, *supra* note 245; *The Impact of Small vs. Large Cruise Ships*, *supra* note 252.

systems and education programs.<sup>254</sup> This more sustainable method of travel is possible for these ships because of their size, usually carrying between seventy to 250 passengers, compared to the thousands of passengers large ships carry.<sup>255</sup>

Aside from minimizing environmental impacts, there are many other advantages to choosing small cruise ships.<sup>256</sup> Another benefit to small cruise ships is the difference in experience, which is likely to draw those tourists seeking remoteness and adventure to Alaska.<sup>257</sup> For example, experiences on small ships are focused outwards, and prioritize connecting with the destination.<sup>258</sup> Small ships offer a more unique experience, visiting tinier, more authentic ports as well as remote destinations, instilling an appreciation of nature, history, and culture in tourists.<sup>259</sup> In contrast, large cruise ships are directed inwards, with the ship itself and its never-ending amenities and on-board entertainment being the focus of the passengers' experience, rather than connecting with the destination.<sup>260</sup> Thus, small cruise ships are a better option for tourists because they are more sustainable and they offer a more up-close experience with Alaska's nature and culture.<sup>261</sup>

Frankly, banning large cruise ships in favor of smaller, more sustainable options may upset local business owners and cruise lines,<sup>262</sup> but it is worth it. Even if such a law initially hurts the state's economy, "the cruise ship industry is only a friend of the Alaskan economy while there are natural resources to exploit."<sup>263</sup> If Alaska's environment continues to deteriorate,

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254. Wyszynska-Aldridge, *supra* note 245.

255. Mack, *supra* note 243; Smith, *supra* note 248.

256. *See* Smith, *supra* note 248.

257. *See id.*; Mack, *supra* note 243.

258. Smith, *supra* note 248.

259. *Id.*

260. *Id.*

261. *See id.*; Mack, *supra* note 243.

262. *See* Larson, *supra* note 25; Stremple, *supra* note 22.

263. Marrin, *supra* note 98, at 340.

partly due to large cruise ships, tourists will no longer visit Alaska, and its economy will lose the benefits of tourism altogether.<sup>264</sup> As long as tourists remain interested in Alaska—and are willing to pay for it—cruise lines will adapt to comply with the new law.<sup>265</sup> The cost of not adapting will be that other travel companies will take their place in the market. To sustain both the environment and the economy in the long run, the state legislature must take drastic measures. Alaska's tourism industry and the state's environment "can function symbiotically; the tourism industry utilizes Earth's natural wonders to operate profitable tours while the resulting revenues can then be used to preserve . . . those wonders," but it can also "parasitically exploit Earth's natural wonders to the detriment of the environment."<sup>266</sup> State legislators must resist pressure from cruise lines and put its environment first, which will in turn help residents and the economy.<sup>267</sup>

### C. *Winning a Dormant Commerce Clause Challenge*

Perhaps the greatest hurdle to enacting a law that bans large cruise ships from Southeast Alaska is overcoming a potential challenge under the Dormant Commerce Clause; fortunately, the Town of Bar Harbor, Maine, provided legislators with the framework to do just that.<sup>268</sup> The Dormant Commerce Clause is an implied limitation on states' regulation of commerce,<sup>269</sup> which conceivably implicates Alaska's ability to regulate

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264. *Id.* at 340–41.

265. *See Ass'n to Pres. & Protect Loc. Livelihoods v. Town of Bar Harbor*, 721 F. Supp. 3d 56, 96 (D. Me. 2024), *aff'd in part, vacated in part, remanded sub nom., Ass'n to Pres. & Prot. Loc. Livelihoods v. Sidman*, 147 F.4th 40 (1st Cir. 2025).

266. Wright, *supra* note 114, at 64.

267. *See Diller, supra* note 128 (finding that "continued [cruise industry] growth is putting a strain on the very environment tourists come to see" and that balance between tourists, residents, and the environment is necessary).

268. *Bar Harbor*, 721 F. Supp. 3d at 88; *Sidman*, 147 F.4th 40.

269. *See Tenn. Wine & Spirits Retail Ass'n v. Thomas*, 588 U.S. 504, 547 (2019).

tourism as interstate commerce.<sup>270</sup> While the Supreme Court and the Ninth Circuit have yet to weigh in on this issue, a recent decision from the federal court for the District of Maine supports the argument that Alaska legally can, and should, enact a law limiting the size of cruise ships allowed to dock in Southeast Alaska.<sup>271</sup>

### 1. *What is the Dormant Commerce Clause?*

The Dormant Commerce Clause is rooted in the Constitution's Commerce Clause, which gives Congress the power to "regulate Commerce . . . among the several states[.]"<sup>272</sup> The Supreme Court has implied a limitation in the Commerce Clause on states' regulation of interstate commerce in areas where the federal government has not acted.<sup>273</sup> The policy behind the Dormant Commerce Clause is to prevent state protectionism, which was a central problem with the Articles of Confederation, and to ensure that out-of-state citizens are not adversely affected by another state's laws without means of recourse, since they cannot vote in that state.<sup>274</sup> Under this doctrine, a state cannot engage in economic protectionism by placing undue burden

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270. See *Interstate Travel as a Fundamental Right*, CONST. ANNOTATED, [https://constitution.congress.gov/browse/essay/amdt14-S1-8-13-2/ALDE\\_00000840/](https://constitution.congress.gov/browse/essay/amdt14-S1-8-13-2/ALDE_00000840/) [<https://perma.cc/HN6A-DAMG>] (last visited Jan. 9, 2026) (explaining "the doctrine of the 'right to travel' . . . encompasses . . . the right of a citizen to move freely between states").

271. See *Bar Harbor*, 721 F. Supp. 3d at 87–98, *aff'd in part, vacated in part, remanded sub nom.*, *Sidman*, 147 F.4th 40.

272. U.S. CONST. art. I, § 8, cl. 3.

273. See *Tenn. Wine & Spirits Retail Ass'n*, 588 U.S. at 545.

274. "Under the Articles of Confederation, Congress lacked the authority to regulate interstate and foreign commerce." *Historical Background on Dormant Commerce Clause*, CONST. ANNOTATED, [https://constitution.congress.gov/browse/essay/artI-S8-C3-7-2/ALDE\\_00013308/](https://constitution.congress.gov/browse/essay/artI-S8-C3-7-2/ALDE_00013308/) [<https://perma.cc/QJ2L-98K5>] (last visited Jan. 9, 2026). This resulted in states engaging in economic protectionism by imposing barriers to trade. *Id.* The federal government responded to this by convening the Annapolis Convention of 1786 to remove these barriers, as such protectionism could lead to interstate conflicts. *Id.* It was within this context that the Constitution's Framers discussed Congress's power to regulate interstate commerce at the Philadelphia Convention of 1787. *Id.*

on interstate commerce.<sup>275</sup> A state law cannot discriminate against out-of-state commerce through its text,<sup>276</sup> effect,<sup>277</sup> or purpose.<sup>278</sup>

However, the court may uphold a law that discriminates against out-of-state commerce if there is a legitimate, non-discriminatory purpose that cannot be accomplished through alternative, non-discriminatory means.<sup>279</sup> Therefore, nondiscriminatory laws that burden interstate commerce “will be upheld unless the burden imposed on . . . commerce is clearly excessive in relation to . . . local benefits.”<sup>280</sup> There are two exceptions under this doctrine: (1) where there is congressional approval authorizing the state’s action,<sup>281</sup> and (2) where the state acts as a market participant rather than a regulator.<sup>282</sup> Although regulating tourism potentially implicates these principles, the federal court for the District of Maine and the First Circuit considered whether a local ordinance placing a daily cap on cruise passengers violates the Dormant Commerce Clause.<sup>283</sup> Following the courts’ reasoning, Alaska state legislators can frame a law banning large cruise ships in a way that does not violate the Dormant Commerce Clause.

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275. *See Tenn. Wine & Spirits Retail Ass’n*, 588 U.S. at 523.

276. *See City of Philadelphia v. New Jersey*, 437 U.S. 617, 626–28 (1978).

277. *See Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 340, 350–53 (1977); *Exxon Corp. v. Governor of Md.*, 437 U.S. 117, 125–26 (1978).

278. *See West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 194–95 (1994); *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 471 n.15 (1981).

279. *See Maine v. Taylor*, 477 U.S. 131, 138 (1986).

280. *See Pike v. Bruce Church*, 397 U.S. 137, 142 (1970).

281. *See W. & S. Life Ins. v. State Bd. of Equalization*, 451 U.S. 648, 652–53 (1981).

282. *See Reeves, Inc. v. Stake*, 447 U.S. 429, 437 (1980); *South-Central Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 93 (1984).

283. *See Ass’n to Pres. & Protect Loc. Livelihoods v. Town of Bar Harbor*, 721 F. Supp. 3d 56, 56 (D. Me. 2024), *aff’d in part, vacated in part, remanded sub nom.*, *Ass’n to Pres. & Prot. Loc. Livelihoods v. Sidman*, 147 F.4th 40 (1st Cir. 2025).

## 2. The Bar Harbor Dormant Commerce Clause analysis

In 2025, the First Circuit largely affirmed the district court's decision holding that a local ordinance regulating cruise tourism did not violate the Dormant Commerce Clause.<sup>284</sup> Although the Court vacated and remanded a portion of the district court's reasoning, it provided the reasoning necessary to overcome such a challenge.<sup>285</sup> This case arose when local business owners challenged a Bar Harbor town ordinance that set a daily cap on cruise passengers.<sup>286</sup> While the First Circuit's decision is not binding on Alaska because it is from a different jurisdiction, this case acts as persuasive authority, providing insight as to how a federal judge might rule if a state law banning large cruise ships is brought to a court that does have binding authority on Alaska.<sup>287</sup>

Similar to many Southeast Alaska communities, Bar Harbor is a small coastal town where local businesses and residents heavily rely on tourism. Although the town's proximity to Acadia National Park means that most of Bar Harbor's visitors are land-based tourists rather than cruise passengers,<sup>288</sup> the town nonetheless decided to regulate cruise tourism to combat congestion downtown.<sup>289</sup> Like Juneau, Bar Harbor entered into memoranda of agreement with cruise lines, capping the number of passengers permitted to visit the town per day.<sup>290</sup> In

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284. See *Bar Harbor*, 721 F. Supp. 3d at 70–71, 95, *aff'd in part, vacated in part, remanded sub nom.*, *Sidman*, 147 F.4th 40.

285. *See id.*

286. *Id.* at 66.

287. Bar Harbor is a First Circuit case, while Alaska sits within the Ninth Circuit. See *What Is the Ninth Circuit?*, *supra* note 29.

288. See *Bar Harbor*, 721 F. Supp. 3d at 67–69.

289. Bar Harbor first implemented a policy of daily cruise passenger caps back in 2008. *Id.* at 68–69. The town council set daily caps of 3,500 passengers for the busy season and 5,500 for the off-season. *Id.* at 69. At the time, these caps were "voluntary" and "mutually acceptable" to both the town council and the cruise industry. *Id.* However, over the next 15 years, the tourism industry would steadily grow, meeting these caps as more and larger cruise ships docked in the small town. *Id.*

290. *Id.* at 71; *Stremple*, *supra* note 22.

response to residents' continued frustration with overcrowding, even following the memoranda of agreement, Bar Harbor passed a land use ordinance lowering the cap to 1,000 passengers.<sup>291</sup> As a result, local business owners and other tourism industry actors filed a lawsuit in federal court, alleging, among other things,<sup>292</sup> that the ordinance violates the Dormant Commerce Clause.<sup>293</sup>

Turning to the district court's Dormant Commerce Clause analysis, the plaintiffs alleged that Bar Harbor's ordinance is protectionist and discriminatory.<sup>294</sup> In the alternative, they claimed that the burdens imposed by the ordinance far exceed any local benefits.<sup>295</sup> The plaintiffs separately alleged that the daily cap discriminates against, and burdens foreign commerce.<sup>296</sup>

First, the plaintiffs claimed that the ordinance is protectionist and discriminatory because it only impacts cruise passengers, and disregards any congestion caused by land-based tourists.<sup>297</sup> The district court did not find this argument

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291. *Bar Harbor*, 721 F. Supp. 3d at 72. Interestingly, the cruise industry voiced similar concerns, leading the president of the Cruise Lines International Association to propose a reduction in the number of passengers permitted per day. *Id.* at 70.

292. In their complaint, plaintiffs alleged the following claims: (1) the ordinance is preempted by the United States Constitution's Supremacy Clause; (2) it violates the Dormant Commerce Clause; and (3) it offends substantive due process. Complaint at 16, 23, 30, 31, Ass'n to Pres. & Prot. Loc. Livelihoods v. Bar Harbor, 721 F. Supp. 3d 56 (D. Me. 2024) (No. 1:22cv00416). The plaintiffs additionally alleged that the ordinance violates the Maine Constitution. *Bar Harbor*, 721 F. Supp. 3d at 75. For the purposes of this Note, this section will only discuss the court's Dormant Commerce Clause analysis.

293. There were several plaintiffs in the action, including the Association to Preserve and Protect Local Livelihoods ("APPLL"). Complaint at 3–5, Ass'n to Pres. & Prot. Loc. Livelihoods v. Bar Harbor, 721 F. Supp. 3d 56 (D. Me. 2024) (No. 1:22cv00416). APPLL is a league of business owners in Bar Harbor, Maine. *Id.* at 3. Its members include owners and employees of "restaurants, retail stores and tourism-related businesses." *Id.* The other plaintiffs involved in the case are also actors within the tourism industry. *See id.* at 4–5. The defendant was the Town of Bar Harbor, which is governed by a town council. *Id.* at 5.

294. *Id.* at 24.

295. *Id.* at 26–27.

296. *Id.* at 27–28.

297. *Id.* at 90–91.

persuasive.<sup>298</sup> Instead, it found that the ordinance is a neutral regulation because it applies equally to passengers arriving after the 1,000-person cap is reached, regardless of the passenger's state of origin.<sup>299</sup> Any preference towards land-based travelers is not grounded in the traveler's state or national citizenship.<sup>300</sup> Similarly, the district court reasoned that the ordinance does not discriminate against foreign commerce because it is indifferent as to the origin of the cruise ships.<sup>301</sup>

Next, the district court found that the "burdens and benefits of [the] ordinance do not discriminate" against any interstate or foreign attributes of actors who want to participate in Bar Harbor's local economy.<sup>302</sup> "The burden is not imposed because of the interstate nature of the traffic but rather because of various features of that traffic . . . that hamper the experience of local welfare."<sup>303</sup> Moreover, the ordinance does not advance any supposed local interest.<sup>304</sup> Actually, the opposite is true. The primary effect of the ordinance is detrimental to local businesses, who will likely lose customers.<sup>305</sup> Also, Bar Harbor voters did not engage in a "parochial or isolationist exercise," as the plaintiffs alleged.<sup>306</sup> Instead, their vote reflected the reality they have witnessed first-hand: overcrowding caused by cruise tourism.<sup>307</sup> The district court held that, "[i]n both purpose and effect, [the voters] have acted only to limit the extent to which Bar

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298. *Id.* at 91.

299. *Bar Harbor*, 721 F. Supp. 3d at 91.

300. *Id.*

301. *Id.* at 88–89.

302. *Id.* at 91.

303. *Id.*

304. *Id.*

305. *See Bar Harbor*, 721 F. Supp. 3d at 91.

306. *Id.*

307. *See id.*

Harbor must be victim to its own success, while continuing to welcome travelers from every corner of the world.”<sup>308</sup>

The First Circuit affirmed the district court’s above reasoning, yet found issue with its analysis of whether “the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.”<sup>309</sup> Similar to Southeast Alaska, most of the cruise ships that visit Bar Harbor carry over 1,000 passengers,<sup>310</sup> meaning that out of the 134 cruise ships scheduled for the 2023 season, only twenty-seven would have been able to disembark all of their passengers without exceeding the daily cap.<sup>311</sup> The district court predicted that large cruise ships would likely not return to Bar Harbor, but at least some cruise lines would adjust their practices so they may continue to visit the town.<sup>312</sup>

Additionally, the district court recognized that with a decrease in cruise tourism, local businesses will suffer financially, losing customers, cutting staff, and even closing their doors during the off-season.<sup>313</sup> However, it explained that the Dormant Commerce Clause is not the appropriate remedy to protect these interests.<sup>314</sup> The district court reasoned that private actors could adapt their operations to comply with the ordinance, and “cruise enthusiasts” interested in visiting Bar Harbor could do so aboard smaller ships.<sup>315</sup> Without evidence to estimate how many fewer tourists would visit Bar Harbor, the

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308. *Id.* at 91. The court continued: “These on-the-ground realities are quite unlike the isolationist and protectionist circumstances discussed in the expansive corpus of dormant Commerce Clause jurisprudence.” *Id.*

309. *Id.* at 95 (quoting *Pike v. Bruce Church*, 397 U.S. 137, 142 (1970)) (internal quotations omitted); *Ass’n to Pres. & Protect Loc. Livelihoods v. Sidman*, 147 F.4th 40 (1st Cir. 2025).

310. *Bar Harbor*, 721 F. Supp. 3d, at 74.

311. *Id.*

312. *Id.* at 74–75.

313. *See id.* at 74.

314. *See id.* at 96.

315. *Id.*

district court found that the ordinance's burden on interstate commerce is uncertain.<sup>316</sup>

The First Circuit explains that the district court clearly found that the ordinance would impose a "cognizable burden on interstate commerce"—a finding the First Circuit agrees with—but found the district court's analysis of whether that burden is "clearly excessive" is lacking.<sup>317</sup> According to the First Circuit, the district court "discounted the seeming magnitude of the burden that it found, as it merely described that burden as 'uncertain' and 'impossible to quantify,' because 'it is impossible to know how many fewer visitors will travel to Bar Harbor.'"<sup>318</sup> Due to this characterization and the fact that the district court failed to acknowledge how the ordinance will burden cruise visitors to other jurisdictions due to the "interconnected" character of the cruise industry, the First Circuit found a "mismatch between the District Court's findings about the extent of the Ordinance's burdensome impact and the District Court's ultimate characterization of that impact."<sup>319</sup>

Finally, the district court found that Bar Harbor has a legitimate interest in restricting cruise tourism.<sup>320</sup> Bar Harbor's local interest in reducing congestion is not only noneconomic but is "both real and reasonably well calibrated to ameliorate the particularized excesses of modern cruise tourism and how it interfaces with Bar Harbor's waterfront."<sup>321</sup> To support this conclusion, the district court compared Bar Harbor's interest to those in other cases where the Supreme Court found a legitimate interest.<sup>322</sup> Due to the "intimate nature" of the local interests that led to the ordinance, the district court found that the ordinance

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316. *Bar Harbor*, 721 F. Supp. 3d at 96.

317. *See Ass'n to Pres. & Protect Loc. Livelihoods v. Sidman*, 147 F.4th 40, 66 (1st Cir. 2025).

318. *Id.*

319. *Id.*

320. *Id.* at 97.

321. *Id.*

322. *Id.* (citing cases where the Supreme Court found that reducing the flow of traffic and public health are legitimate interests).

does not impose a burden on interstate commerce that is “clearly excessive in relation to the putative local benefits.”<sup>323</sup>

Although the First Circuit does not dispute the district court’s finding that reducing congestion is a legitimate local interest, it found that the district court failed to make a “meaningful finding about the magnitude of the benefits attributable to the Ordinance.”<sup>324</sup> This is because the district court found that the ordinance’s benefits would be limited to the waterfront area, yet the ordinance’s focus is seemingly on relieving overcrowding in the downtown area more generally.<sup>325</sup> The First Circuit also found that the district court failed to address whether “less burdensome means could have yielded much or all of the benefit achieved by the Ordinance.”<sup>326</sup> Thus, the First Circuit could not agree that “the Ordinance may be deemed not to be clearly excessive based on a determination that its ‘uncertain’ burdens on interstate commerce are ‘commensurable’ to its ‘putative local benefits.’”<sup>327</sup>

On remand, the First Circuit instructed the district court to “expressly account” for the extent to which the ordinance “restricts the volume of tourists able to reach Bar Harbor by virtue of the Ordinance’s cap,” and “burdens other coastal towns by reducing the volume of cruise tourism to those jurisdictions.”<sup>328</sup> Additionally, the district court must make “clear findings” as to the extent to which the ordinance “meaningfully advances Bar Harbor’s interest in lessening congestion” and “produces such local benefits that could not ultimately be achieved through less burdensome means.”<sup>329</sup>

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323. *Sidman*, 147 F.4th 40 at 97 (quoting *Pike v. Bruce Church*, 397 U.S. 137, 142 (1970)) (internal citations omitted).

324. *Id.* at 69.

325. *Id.* at 70–71.

326. *Id.* at 71.

327. *Id.* at 72.

328. *Id.*

329. *Sidman*, 147 F.4th 40 at 72.

### 3. Applying *Bar Harbor* to Southeast Alaska

Following the district court and the First Circuit's analysis, a law banning large cruise ships would not violate the Dormant Commerce Clause because it is not protectionist and discriminatory, nor would it impose an excessive burden on interstate commerce.<sup>330</sup> First, this type of law is not protectionist and discriminatory. Like *Bar Harbor*, where the ordinance equally applies to all cruise passengers regardless of their citizenship or origin, the proposed law is a neutral regulation, treating all cruise ships the same, regardless of their origin or that of their passengers.<sup>331</sup> This means the law would uniformly affect Alaska-owned cruise lines, out-of-state cruise lines, and foreign cruise lines.<sup>332</sup> Similarly, any preference towards land-based tourism is based on overcrowding and environmental harms caused by large cruise ships rather than those ships' passengers' state or national citizenship.<sup>333</sup> Thus, a law banning large cruise ships is not protectionist nor discriminatory against interstate or foreign commerce.

Likewise, the burdens and benefits of the law would not discriminate against any interstate or foreign attributes of actors who want to participate in Southeast Alaska's economy. The burden placed on cruise tourism does not discriminate based on its "interstate nature of the traffic but rather because of various features of [the] traffic . . . that hamper the experience of

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330. See Ass'n to Pres. & Protect Loc. Livelihoods v. Town of Bar Harbor, 721 F. Supp. 3d 56, 97 (D. Me. 2024) (quoting *Pike v. Bruce Church*, 397 U.S. 137, 142 (1970)).

331. See *id.* at 91.

332. While over 50% of cruise passengers are from the United States, most cruise ships are registered in foreign countries under "flags of convenience." Nanda, *supra* note 121, at 213–14. This means that "ship owners register a ship in a country other than their own, in order to evade their country's tax laws and to take advantage of the registry country's lax safety and labor regulations and weak enforcement policies." *Id.* at 214.

333. Like *Bar Harbor*, where the court did not find evidence of bias in favor of land-based accommodations like hotels, given the remoteness of Southeast Alaska—where tourists can only access most ports from sea or air—there is no bias in favor of hotels or other land-based accommodations. See *Bar Harbor*, 721 F. Supp. 3d at 91–92.

local welfare.”<sup>334</sup> Like the *Bar Harbor* ordinance, this law would harm local businesses rather than advancing their interests because they will lose customers.<sup>335</sup> Therefore, a law banning cruise ships in Southeast Alaska is not a “parochial or isolationist exercise,”<sup>336</sup> but rather it is rooted in on-the-ground realities that residents in these communities face—overcrowding caused by the thousands of passengers flooding their streets and disrupting their daily lives.<sup>337</sup> This law would “act[] only to limit the extent to which [Southeast Alaska] must be victim to its own success.”<sup>338</sup>

Furthermore, the proposed law would not impose a burden on interstate commerce that is “clearly excessive in relation to the putative local benefits.”<sup>339</sup> Similar to *Bar Harbor*’s cap on cruise passengers, there is no doubt that banning large cruise ships will burden commerce because most cruise ships that visit Alaska are massive.<sup>340</sup> Likewise, other tourism industry actors, including local businesses, will likely suffer financially.<sup>341</sup> As the *Bar Harbor* Court explained, however, the Dormant Commerce Clause is not a remedy to alleviate economic burdens on private actors who may have to adjust their practices to comply with the law.<sup>342</sup> So long as tourists are willing to pay to visit Alaska, at least some cruise lines will adapt their operations to comply with the law and satisfy this demand.<sup>343</sup>

Finally, Alaska has a legitimate interest in regulating cruise tourism. Southeast Alaska’s interests are more persuasive than those in *Bar Harbor* because cruise tourism is the primary cause

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334. *See id.* at 91.

335. *See id.*

336. *Id.*

337. *See* MCKINLEY RSCH. GRP., *supra* note 5, at 33–34.

338. *Bar Harbor*, 721 F. Supp. 3d at 91.

339. *See* *Pike v. Bruce Church*, 397 U.S. 137, 142 (1970).

340. *See* *Bar Harbor*, 721 F. Supp. 3d at 96; *CERVENY*, *supra* note 24, at 1.

341. *See* *Bar Harbor*, 721 F. Supp. 3d at 96.

342. *See id.*

343. *See id.*

of overcrowding and overtourism in Alaska, whereas in Bar Harbor, cruise tourism only contributed to that caused by land-based tourism.<sup>344</sup> Like *Bar Harbor*, where the District of Maine found that local interest in reducing congestion is not only non-economic but is “both real and reasonably well calibrated,”<sup>345</sup> a ban on large cruise ships is a targeted measure aimed at alleviating the strain these vessels place on communities and the environment. Preserving Alaska’s environment is a far more compelling interest than reducing congestion, though the law would accomplish that as well. Following the First Circuit’s instructions to the district court on remand, here, given the environmental damage caused by cruise ships, it is clear that the law would meaningfully advance Alaska’s interest in protecting its environment.<sup>346</sup> Likewise, such benefits cannot be achieved through less burdensome means because cruise ships are the root of the environmental issues.<sup>347</sup> In fact, Juneau has attempted less burdensome means in the past (passenger fees and memoranda of agreement), which were not successful in alleviating the strain on the environment.<sup>348</sup> Therefore, if state legislators enact a law regulating the size of cruise ships allowed in Southeast Alaska, it is likely to overcome a potential Dormant Commerce Clause challenge.

## CONCLUSION

Bald eagles soaring through snow-kissed mountains. Humpback whales breaching from the blue sea. This is the untamed imagery that captures the imagination of tourists as they

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344. *See id.* at 97.

345. *Id.*

346. *See supra* Section I.C.1.; Ass’n to Pres. & Protect Loc. Livelihoods v. Sidman, No. 24-1317, 2025 WL 2304915, \*24–25 (1st Cir. Aug. 11, 2025).

347. *Id.*

348. *Id.*; *see also* Julie Jacobs, *Keeping Cruises at Bay: Whether Port Cities Violate the Dormant Commerce Clause and Federal Maritime Law*, 100 CHI.-KENT L. REV. 397, 402–03 (2025).

dream of discovering Alaska, the Last Frontier.<sup>349</sup> Overtourism threatens to destroy this dream, as massive cruise ships strain the very environment that makes Alaska so extraordinary.<sup>350</sup> There is no denying that the cruise industry substantially contributes to both the state and local economies;<sup>351</sup> however, overtourism has serious consequences for Southeast Alaska communities and their surrounding environment.<sup>352</sup> There may not be a perfect answer, but inaction is not an option. It's time for state legislators to step in.

Alaska's state legislators should enact a law restricting the size of cruise ships allowed to dock in Southeast Alaska. The majority of Southeast Alaska lacks regulations on the volume of cruise ship traffic and passengers permitted to disembark.<sup>353</sup> Juneau has established memoranda of agreement with cruise lines, but residents continue to advocate for stronger restrictions to alleviate overcrowding.<sup>354</sup> These agreements fall short as effective solutions for overtourism because they neglect environmental concerns and lack enforceability.<sup>355</sup> Alaska cannot rely on cruise lines to self-regulate, as evidenced by the Royal Caribbean's plans to construct a new cruise port in Juneau, in spite of residents' concerns.<sup>356</sup> Thus, state legislators must intervene to safeguard local communities and the environment, striking a balance between the interests of residents and visitors.

Protecting the environment by banning large cruise ships is worth inconveniencing a few cruise lines and local

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349. See *USA Bucket List: BEST Places to Visit in the USA*, *supra* note 12; *Alaska Bucket List: 60+ Best Things to Do in Alaska*, BUCKET LIST LISTS, <https://bucketlistlists.com/things-to-do-in-alaska-bucket-list-ideas/> [<https://perma.cc/VJ6A-L469>] (last visited Jan. 9, 2026).

350. See *supra* Section I.C.1.

351. See *supra* Section I.C.

352. *Id.*

353. See *supra* Part II.

354. See *supra* Section II.A.

355. See *supra* Section III.A.

356. See Press Release: Goldbelt Signs with Royal Caribbean, *supra* note 25.

businesses.<sup>357</sup> Alaska's tourism industry depends on the preservation of its natural beauty and resources, and so acting now is essential to secure the long-term health of the tourism industry and Alaska's economy.<sup>358</sup> Although the Dormant Commerce Clause poses a potential problem for state regulation of tourism, *Bar Harbor* equips Alaska with the framework to defeat these challenges.<sup>359</sup> While *Bar Harbor* is not a binding decision, the District of Maine's analysis supports the argument that Alaska's state legislators legally can, and should, enact a law limiting the size of cruise ships allowed to dock in Southeast Alaska.<sup>360</sup> This is not to say that Alaska should entirely eliminate its tourism industry. Rather, prohibiting large cruise ships provides an opportunity for smaller, more sustainable ships to take their place in the state's economy, leaving behind fewer environmental footprints and making it possible for tourists to experience Alaska in the way they likely imagined it.<sup>361</sup>

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357. *See supra* Section III.B.

358. *See id.*

359. *See Ass'n to Pres. & Protect Loc. Livelihoods v. Town of Bar Harbor*, 721 F. Supp. 3d 56 (D. Me. 2024), *aff'd in part, vacated in part, remanded sub nom.*, *Ass'n to Pres. & Prot. Loc. Livelihoods v. Sidman*, 147 F.4th 40 (1st Cir. 2025); *supra* Section III.C.3.

360. *See Bar Harbor*, 721 F. Supp. 3d at 56.

361. *See id.* at 96; *supra* Section III.C.2.