

SJR

28

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SJR 28

Revision Date: 5/4/95 Dept. Affected: ADFG
 Title: Requesting the Federal BRU: _____
 Subsistence Board recind actions on the Kenai Peninsula Component: _____
 Sponsor: Sen. Salo
 Requester: _____ COMPONENT SERIAL NO. _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL					-	
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ _____

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

There are no direct costs to the Department of Fish and Game that would result from passage of this resolution.

Prepared by: _____
 Division: _____
 Approved by Commissioner: *Frank R.*
 Agency: _____

Phone: _____
 Date: _____
 Date: 5-4-95

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**ENATE COMMITTEE REF RT
First Committee of Referral**

DATE: 4/29/95

FURTHER: State Affairs

Date of 5-Day Notice: 24-Hour Rule
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 5-5-95

Resources Committee considered SJR 28

Requesting Federal Subsistence Board not to adopt the proposed subsistence moose hunting regulations for Kenai.

and recommends:

- be replaced with _____ CS _____
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>John Taylor</i>		<i>[Signature]</i>	✓		
		<i>[Signature]</i>	✓		
CHAIR:		<i>Steven A. Swan</i>	✓		

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Department	Date	Zero	Fiscal
ADD-6	5/4	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

MAY 5 FRIDAY 15:30 - 17:30 BUTROVICH ROOM CAP205
PUBLIC HEARING ANNOUNCED ** UPDATE 2 **
SENATE RESOURCES 50715

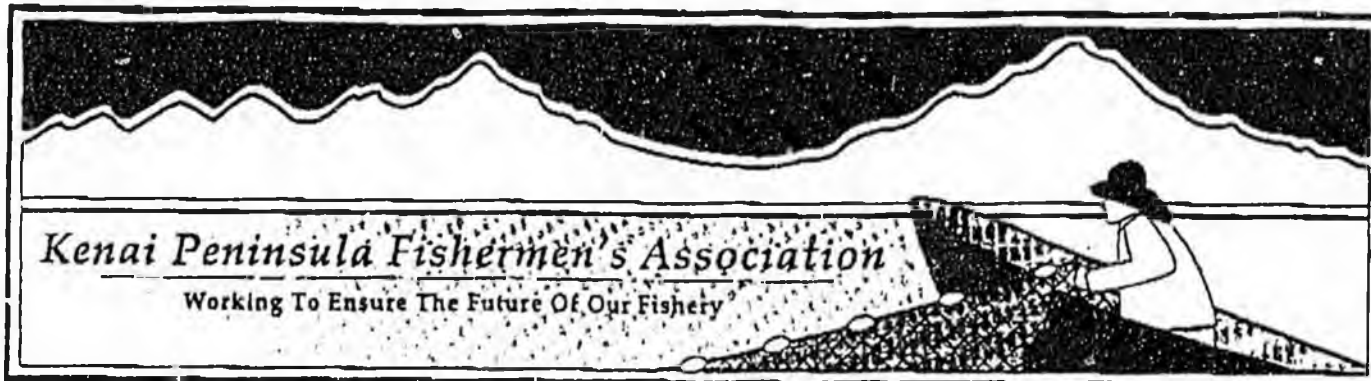
SITES: ANC, DLG, FBX, *JNU, SOL
OFFNETS: OF1-NINILCHIK

SJR 28 KENAI PENINSULA SUBSISTENCE PROPOSAL
HJR 24 WASTE IN PACIFIC AND BERING SEA FISHERY
HJR 38 MAGNUSON FISHERY CONSERVATION & MGMT ACT
HB 141 TERM OF FISH BOARD MEMBERS
HB 207 ADJUSTMENTS TO OIL AND GAS ROYALTIES

SPONSOR REMARKS TO THE PUBLIC
TESTIMONY WILL BE TAKEN WITH A 3 MINUTE LIMIT.

Selection=>

PF1 PF2 PF3 PF4 PF5 PF6 PF7 PF8 PF9 PF10 PF11 PF12
HELP EXIT BASIS PRINT BWD FWD FIRST LAST QUIT



34824 Kalifornsky Beach Road • Suite E • Soldotna • Alaska • 99669 • (907) 262-2492

May 5, 1995

Senator Judy Salo
Rep. Mike Navarre
State Capital Bld.
Juneau, AK. 99801

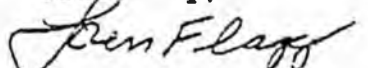
Dear Senator Salo and Rep. Navarre,

KPFA would like to thank you for your May 2, 1995 letter to the Federal Subsistence Board requesting that it "revisit the rural designation" for Kenai Peninsula communities.

We support and appreciate your efforts through HJR 48/SJR 28 on behalf of Kenai Peninsula residents. We feel quite strongly that the Federal Subsistence Board should not adopt any federal regulation changes for hunting or fishing on the Kenai Peninsula.

KPFA continues to support SJR 19 as at least one part of the solution to the subsistence dilemma and would urge you to also support this resolution. I think it is important to note that there has been strong support for this resolution from the fishing community - both sport and commercial - as well as from concerned hunters.

Sincerely,


Loren Flagg
Executive Director

cc: Governor Tony Knowles
Lt. Governor Fran Ulmer
Senator John Togerson
Rep. Gary Davis
Rep. Gail Phillips
UFA

9:00 PM Resources

9-LS1140F ✓

Cook

5/4/95

CS FOR HOUSE JOINT RESOLUTION NO. 48()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES NAVARRE, G.Davis

A RESOLUTION

1 Requesting that the Federal Subsistence Board not adopt the proposed subsistence
2 moose hunting regulations for the Kenai Peninsula, not adopt any other federal
3 regulation changes for hunting or fishing on the Kenai Peninsula, and not adopt
4 the changes in federal regulations that make a customary and traditional use
5 determination for certain communities in Alaska.

6 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

7 WHEREAS the Federal Subsistence Board has proposed granting new subsistence
8 preferences to several communities on the Kenai Peninsula for the purposes of subsistence
9 hunting; and

10 WHEREAS the adoption of any new federal regulation changes for subsistence
11 hunting may create additional conflicts with subsistence hunting and fishing and further divide
12 residents of the Kenai Peninsula and Alaska; and

13 WHEREAS this will be the first time that communities will have been given new
14 subsistence preferences since the federal government took over the management of subsistence
15 of hunting on federal lands; and

1 WHEREAS this federal proposal does not address the adverse effects on the 44,400
2 residents of the Kenai Peninsula, most of whom do not agree with this plan; and

3 WHEREAS a petition opposing the Federal Subsistence Board's proposal was signed
4 by 1,800 residents of the Kenai Peninsula within 10 days after the petition began to be
5 circulated; and

6 WHEREAS there was not sufficient opportunity for peninsula residents to testify
7 before the Federal Subsistence Board to address their concerns about these drastic changes in
8 hunting regulations on the Kenai Peninsula; and

9 WHEREAS the public is poorly informed about the process of the regional subsistence
10 advisory councils and the degree of deference given to those regional councils by the Federal
11 Subsistence Board; and

12 WHEREAS the residents of the communities of Hope, Cooper Landing, Whittier,
13 Seldovia, and Ninilchik should not receive special preference over other residents of Kenai
14 Peninsula communities; and

15 WHEREAS Alaskans are working for a comprehensive solution for regaining state
16 management of fish and game;

17 BE IT RESOLVED that the Alaska State Legislature respectfully and urgently
18 requests that the Federal Subsistence Board not approve the proposed subsistence moose
19 hunting regulations for the Kenai Peninsula; and be it
Alaskan Communities

20 FURTHER RESOLVED that the Alaska State Legislature respectfully requests the
21 Federal Subsistence Board not to adopt any future federal regulations that would grant
22 subsistence preferences for fish or game until January 1, 1997, unless the regulations are
23 concurred in by the commissioner of the Alaska Department of Fish and Game; and be it

24 FURTHER RESOLVED that the Alaska State Legislature respectfully requests that
25 the Federal Subsistence Board refrain from changing any of the customary and traditional use
26 determinations for Kenai Peninsula communities in federal regulations until January 1, 1997,
27 to allow the new administration, the legislature, and Alaska's Congressional delegation the
28 opportunity to build consensus among all Alaskans to provide a solution to the subsistence
29 dilemma that will return management of Alaska's fish and game resources to the State of
30 Alaska.

31 COPIES of this resolution shall be sent to the Honorable Al Gore, Jr., Vice-President

1 of the United States and President of the U.S. Senate; the Honorable Strom Thurmond,
2 President Pro Tempore of the U.S. Senate; the Honorable Newt Gingrich, Speaker of the U.S.
3 House of Representatives; the Honorable Bruce Babbitt, Secretary of Interior; the Honorable
4 Dan Glickman, Secretary of Agriculture; and to the Honorable Ted Stevens and the Honorable
5 Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative,
6 members of the Alaska delegation in Congress; and to the Federal Subsistence Board.

MEMORANDUM**STATE OF ALASKA
DEPT OF FISH AND GAME**

To: Wayne Regelin, Acting Director
Wildlife Conservation Div., Juneau

Date: May 5, 1995

Through: Steve Peterson, Senior Staff Biologist
Wildlife Conservation Div., Juneau

From: John Morrison, Coordinator
State-Federal Subsistence Regulations
Wildlife Conservation Div., Anchorage

Telephone: 267-2420

Subject: Kenai C & T and moose hunt

The Federal Subsistence Board will sponsor eight meetings in June for public information and testimony regarding the recent federal decision to grant various Kenai communities federal customary and traditional subsistence use qualification and to create a subsistence moose hunting season to begin in August, 1995.

At present, meetings have been tentatively scheduled as follows:

June 7 - Seldovia
June 8 - Port Graham
June 15 - Hope
June 16 - Cooper Landing
June 17 - Soldotna

Meetings are planned also for Anchorage, Homer, and Ninilchik, but dates have not yet been designated. I will follow up this memorandum with the remaining dates as soon as they become available. The federal subsistence staff at these meetings will explain the rationale for the customary and traditional determinations and the moose hunt, answer questions from the audience, and record any public testimony presented.

The Federal Register describing for public review the Federal Subsistence Board (FSB) decisions for 1995-1996 regulations is scheduled to appear next week. The public will then have 60 days to present requests for reconsideration of any regulations. This Federal Register will contain a *Proposed Rule* for the moose hunting season. In its April meeting, the FSB approved the moose season proposed by the Southcentral Federal Subsistence Advisory Council except that it was amended to restrict harvest to bulls having spike-fork or three-brow-tines antlers instead of the council's proposed any-bull opportunity. It is not clear whether or not the federal regulation will also contain the 50" antler spread restriction.

Post-It™ brand fax transmittal memo 7871		no of pages = 2
To	ROB	From
Co.	BRISWORTH	Co.
Dept.		Phone #
Fax #	5-5-95	Fax #

A 60-day comment period will be open for the public to respond to this proposed rule. On July 10th, the FSB will meet to prepare a final rule, and its decision to either cancel the regulation, amend it, or to accept it as approved in April, will be announced August 3rd in time to affect the scheduled opening date of the moose season on August 10.

cc:

Rob Bosworth
Karl Schneider
Ted Spraker
Gino Delfrate
Terry Haynes
Jim Fall
John Trent
Jim Lieb
Tina Cuning

Senator Judith E. Salo

Alaska State Legislature

SPONSOR STATEMENT SJR 28

I have introduced SJR 28 due to the opposition of most Kenai Peninsula Residents to recent actions by the Federal Subsistence Board. The Federal Subsistence Board has adopted a recommendation by the Regional Subsistence Advisory Council to grant customary and traditional use determinations to several communities on the Kenai Peninsula, and grant residents of those communities preference for subsistence moose hunting on federal lands.

It is my belief as well as the 1800 residents who have signed a petition opposing rural preference on the Kenai Peninsula feel that the Alaska State Legislature should oppose the customary and traditional use determinations for the Kenai Peninsula and not grant preferential hunting rights for residents of those communities. This resolution also asks the Federal Subsistence Board to hold any other proposals until January 1, 1997, so that we can try and solve the subsistence issue and regain state management.

The objections of many of the residents result from the fact that many of these communities are on the road system and the residents of these communities should not receive special preference over other residents on the Kenai Peninsula.

The Kenai National Wildlife Refuge is where most of the 3600 licensed moose hunters from the peninsula go to hunt moose. Giving a ten day head start to residents of the communities who have been given a customary and traditional use determination for moose hunting has the residents of the peninsula very upset and they believe that this will severely limit their opportunity to harvest a moose. This is coupled with the fact that the Kenai Peninsula as well as the rest of the state, is coming out of an extremely tough winter which has resulted in a heavy winter moose kill which will further reduce the opportunity to harvest a moose this season.

If the Federal Subsistence Board goes forward with this proposal, it will pit neighbor against neighbor and will result in a divisive situation for residents of the Kenai Peninsula.

I ask for your support of Senate Joint Resolution 28. Thank you.

South Anchorage • Lower Hillside • Ocean View • Klatt • Kenai • Nikiski • Kalifornsky Beach

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 Interim Anchorage: 716 W 4th, Suite 450 • Anchorage, AK 99501 • (907) 258-8183 • (907) 258-5571 FAX
 Interim Kenai: 145 Mainstreet Loop • Kenai, AK 99611 • (907) 283-7996

Board approves ^{their} ^{Apr. 11/13} ^{Clarion} subsistence hunt for Kenai moose

Hunters from seven Peninsula towns would get a head start on neighbors

By TOM KIZZIA
Daily News reporter

Federal land managers voted Thursday to create a new subsistence moose hunt this August for residents of a handful of communities on the Kenai Peninsula.

The tentative decision was broad enough to include road-accessible settlements such as Cooper Landing and Ninilchik despite a half-day of testimony from Kenai Peninsula residents who said such a hunt would pit neighbor against neighbor.

But in a bow to conservation concerns, the Federal Subsistence Board voted to keep in force the state's antler restrictions, which biologists said are necessary to ensure the long-term health of the moose population.

Some subsistence backers said the new hunt could force the federal government to close the Kenai National Wildlife Refuge to nonsubsistence hunters. The board's decision Thursday left that question unresolved.

At issue is whether the

antler rules, which restrict hunters to shooting only yearling bulls or older bulls with 50-inch racks, might be the kind of subsistence restriction that cannot be imposed under federal law until competing users such as sport hunters are eliminated.

Several officials, including board chairman Mitch Demientieff of Nenana, said it might not be necessary to close the refuge, where nearly half the Kenai Peninsula moose harvest occurs each year. The board would have to vote to close it.

The board will assess the potential impact of the subsistence hunt during a 45-day comment period, Demientieff said. The board will meet in June to make a final decision so a subsistence hunt can be held in August, he said.

The subsistence hunt adopted Thursday would not threaten the overall population of Kenai moose, said Ted Spraker, area biologist with the state Department of Fish and

Please see Back Page, **MOOSE**

MOOSE: Federal panel approves subsistence hunt for the Kenai

Continued from Page A-1

Game. The 10-day hunt start on the Aug. 20 sport-hunt opening would just give subsistence hunters an advantage and increase competition for everyone else, he said.

But if the federal refuge were closed to nonsubsistence hunting, more than 2,500 hunters would be expected to crowd onto state and private land on the Kenai Peninsula or go elsewhere in Alaska to hunt — a prospect that alarmed not only sport hunters but also Lee Basnar of Cantwell, a member of the regional advisory council that brought the subsistence hunting proposal to the federal board.

"They're going to move up in my back yard," Basnar said. "We have to con-

sider the ripple effect on other subsistence users."

Thursday's decision by the federal board, which is meeting all week in Anchorage, marked the first time subsistence rights were given to new communities since the federal government took over management of subsistence on Alaska's federal lands in 1980.

The board said the seven Peninsula communities meeting the federal definition of "rural" — Hope, Whittier, Cooper Landing, Ninilchik, Seldovia, Port Graham and Nanwalek — had traditional uses for moose, bear, sheep and other animals.

The only federal official to vote against that conclusion was Dave Allen, regional director for the U.S. Fish and Wildlife Service.

Allen said very few Cooper Landing residents have roots going back to the community's founding in the 1920s, while Whittier was founded only during World War II.

About 50 people showed up for Thursday's meeting, and many of them testified against subsistence on the Kenai.

"I would urge you not to make our place of residence a battleground," said Gary Hull of Soldotna.

Among those who opposed the rural preference were members of the Cooper Landing state fish and game advisory committee, who would qualify for the subsistence hunts.

"We believe the granting of special hunting and fishing privileges by Z11 code or race is wrong," said

Lyman Nichols, chairman of the Cooper Landing committee.

People complained there had been little public awareness of the subsistence proposal during the year it was being prepared by the Southcentral advisory council, one of 10 regional panels created by the federal government in 1993.

Several Native elders from Ninilchik testified in favor of subsistence, saying they had been overrun by tourists and heavily mechanized hunters.

The original advisory council proposal would have opened the refuge to hunting for any bull moose, including those mid-sized breeding bulls protected by the state's 0-year-old antler restriction.

Biologists said unres-

tricted hunters would probably be able to kill at least 200 bulls, posing a long-term threat to the health of a moose population that lost most of its calves this winter. Spraker said the state would have probably held no moose season on the entire Peninsula if that proposal were adopted.

Some advisory council members said the 200-bull harvest estimate was exaggerated.

Hunters from the seven communities took 36 moose last year during the normal sport season. Given the antler restrictions, subsistence hunters might only take 50 to 75 bulls, biologists estimated. Last year, 221 bulls were shot on the refuge, but this year's harvest is expected to be

smaller because of the tough winter.

While adoption of the antler restrictions could soften the impact on the moose population and other hunters, it could have other far-reaching effects. A new legal opinion issued by the Interior Department this week said that under the 1980 federal law establishing rural subsistence preference, "non-subsistence uses must be eliminated before subsistence uses may be restricted."

Gary Oskolkoff of Ninilchik, a member of the advisory council, said he was happy the federal board granted the subsistence hunt but sorry to see the antler restrictions. He predicted the rules would force a shutdown of the refuge to other hunters.

Fisheries balance altered

April 24

Ruling opens door for subsistence

By TONY LEWIS
Peninsula Clarion

A recent court ruling may pave the way for subsistence fishing on the Kenai River and other popular peninsula fishing streams.

The 9th U.S. Circuit Court of Appeals ruled Thursday that federal subsistence laws apply to Alaska rivers that flow through federal lands.

The court did not list the affected rivers, but said those adjoining national parks, forests and wildlife refuges would fall under federal control.

Roughly half of the Kenai River flows through the Kenai National Wildlife Refuge and the Chugach National Forest.

Other rivers that flow through the wildlife refuge include the Kasilof River, Crooked Creek, Swanson River, Moose River, Killey River, Funny River, Russian River, Fox River, Sheep Creek and Chickaloon River.

The court did not propose specific sub-

See RULING, page 3

...Ruling

Continued from page 1

istence fishing seasons on any of the rivers. Those decisions will be left to the Federal Subsistence Board.

Recent actions by the board suggest subsistence fishing could be allowed on the peninsula in the future.

"We are very concerned that the decision leaves the door open to federal subsistence management of all commercial and sport fisheries, including such popular rivers as the

Kenai River — maybe even this summer — and that would be unacceptable," said Alaska Senate President Drue Pearce and House Speaker Gail Phillips in a prepared statement.

One week before the court decision, the board tentatively approved broad subsistence rights for residents of the peninsula's "rural" communities, including Cooper Landing, Ninilchik and Hope. Those board based on their "customary and traditional" use of the peninsula's resources. For now, those rights extend only to big game animals, such as moose and caribou, but fish could be added to the

list.

Under federal law, subsistence users have a priority over all others for Alaska's fish and game. A proposed subsistence moose hunt on the peninsula could close the Kenai refuge to sport hunting.

Commercial and sport fishers fear their seasons could be significantly scaled back if subsistence fishing is allowed on the peninsula.

"I don't know what this will mean to us," said Refuge Manager Dan Doshier. "One would have to suspect this could have a major impact on fishing in the area given the recent customary and traditional findings by the subsistence

board."

The U.S. Fish and Wildlife Service's subsistence division met Friday to decipher the meaning of Thursday's court decision. Assistant Regional Director Dick Pospabala said a group has been formed by the court to make guidelines for determining the Alaska rivers that will fall under federal control.

Dave Nelson, who heads the Alaska Department of Fish and Game's sportfish division in Soldotna, did not know Friday how the court decision might affect management of the Kenai River's prized salmon and rainbow trout fisheries.

Hunting future unclear

Agencies scramble over subsistence

By TONY LEWIS
Peninsula Clarion

Sport hunting for most game would likely have to be curtailed and possibly eliminated on federal land on the Kenai Peninsula if proposed subsistence rights are upheld.

Moose, caribou, sheep, goat, brown bear and black bear could be off limits to everyone but subsistence users on the peninsula's Kenai National Wildlife Refuge and U.S. Forest Service lands under provisions for subsistence use tentatively approved by the Federal Subsistence Board last week.

Under the board's proposal, 589 households in the "rural" communities of Cooper Landing, Hope, Whittier, Ninilchik, Seldovia, Port Graham, and Nanwalek were determined to have a "customary and traditional use" for the peninsula's big game animals. That determination would give them a priority to harvest game on nearly 3 million acres of public land on the peninsula.

Federal land managers have not yet had time to assess the potential effects of the proposal, but are certain sport hunters will be faced with cutbacks.

"What I can foresee in the near future, unless this is overturned, is a substantial change in sports hunting on the refuge for all the species determined to have a customary use," said Dan Doshier, manager of the 1.97 million acre Kenai

...Hunt

Continued from page 1

National Wildlife Refuge.

A subsistence moose hunt tentatively scheduled for this fall may be a harbinger of what is to come. Sport hunters may be prohibited from harvesting moose on the refuge, depending on the outcome of a legal review.

At issue is whether or not there is enough game on federal lands to accommodate the needs of both subsistence users and sport hunters. By law, subsistence users have first priority. Before subsistence hunting can be restricted, sport hunting must be eliminated.

On Thursday, the Federal Subsistence Board voted to restrict subsistence moose hunting, effectively shutting out sport hunters.

But the fight over moose could just be the beginning. Sport hunting for caribou, sheep, goat, black bear and brown bear is already severely

restricted. If subsistence hunters are given the right to harvest those species, there may not be enough left over to allocate to sport hunters while still ensuring healthy game populations.

Subsistence hunts for big game other than moose could be made as early as next year.

"This is way beyond my wildest imagination of where this was going to lead us," Doshier said. "It paints a pretty bleak picture."

Doshier isn't the only federal land manager taken off guard. Although no subsistence hunts are being discussed on the 1 million acres of Forest Service land on the peninsula this year, that would likely change in 1996 under the current proposal.

"It's hitting us cold," said Duane Harp, manager of the Forest Service's Seward Ranger District. "We don't know the consequences yet."

The subsistence board's decision is far from final. After undergoing a standard review, the pro-

posal will be open for public comment for at least 30 days. The board will then meet again to make its final decision. That meeting will likely take place around the middle of July, said the U.S. Fish and Wildlife Service's Taylor Brelsford.

Sport hunters' hopes bank on the board changing its view on what qualifies a community for subsistence rights. On Thursday, the board determined that all seven of the peninsula's "rural" communities had a "customary and traditional use" of game.

According to Brelsford, the Alaska National Interest Lands Conservation Act, or ANILCA, does not clearly define what constitutes "customary and traditional" use, leaving wide room for interpretation.

So far, the subsistence board and its peninsula advisers have broadly interpreted the term.

Gary Oskolkoff, a member of an advisory council for subsistence issues on the peninsula, said coun-

Peninsula Clarion, April 17, 1995 5

cil members determined that "customary and traditional use" is applicable to all communities whose residents have hunted game for at least three generations.

The community of Hope has been in existence since the turn of the century. Cooper Landing was founded in the 1920s and Whittier in the 1940s.

The area around Kenai, Soldotna, Seward and Homer do not qualify for subsistence because they are not considered "rural" under the law.

The subsistence board voted 5-1 to accept the advisory council's definition of "customary and traditional use." If sport hunting is going to be allowed on the refuge in the near future, Doshier believes that decision will have to be reversed.

"Once they voted to accept the customary and traditional determinations, it was pretty much locked," Doshier said. "I think the only possibility for relief is to change the customary and traditional determination."

Senator Judith E. Salo

Alaska State Legislature



SPONSOR STATEMENT SJR 28

I have introduced SJR 28 due to the opposition of most Kenai Peninsula Residents to recent actions by the Federal Subsistence Board. The Federal Subsistence Board has adopted a recommendation by the Regional Subsistence Advisory Council to grant customary and traditional use determinations to several communities on the Kenai Peninsula, and grant residents of those communities preference for subsistence moose hunting on federal lands.

It is my belief as well as the 1800 residents who have signed a petition opposing rural preference on the Kenai Peninsula feel that the Alaska State Legislature should oppose the customary and traditional use determinations for the Kenai Peninsula and not grant preferential hunting rights for residents of those communities. This resolution also asks the Federal Subsistence Board to hold any other proposals until January 1, 1997, so that we can try and solve the subsistence issue and regain state management.

The objections of many of the residents result from the fact that many of these communities are on the road system and the residents of these communities should not receive special preference over other residents on the Kenai Peninsula.

The Kenai National Wildlife Refuge is where most of the 3600 licensed moose hunters from the peninsula go to hunt moose. Giving a ten day head start to residents of the communities who have been given a customary and traditional use determination for moose hunting has the residents of the peninsula very upset and they believe that this will severely limit their opportunity to harvest a moose. This is coupled with the fact that the Kenai Peninsula as well as the rest of the state, is coming out of an extremely tough winter which has resulted in a heavy winter moose kill which will further reduce the opportunity to harvest a moose this season.

If the Federal Subsistence Board goes forward with this proposal, it will pit neighbor against neighbor and will result in a divisive situation for residents of the Kenai Peninsula.

I ask for your support of Senate Joint Resolution 28. Thank you.

South Anchorage • Lower Hillside • Ocean View • Klatt • Kenai • Nikiski • Kalifornsky Beach

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Alaska State Legislature

(Official Business

State Capitol
Juneau, AK 99801-1182

May 2, 1995

Mitch Demientieff, Chair
Federal Subsistence Board
c/o FWS Office of Subsistence Management
1011 East Tudor Road
Anchorage, AK 99503

Dear Mr. Demientieff:

This letter is to comment on the proposed rule determining communities where "customary and traditional" subsistence uses exist. Additionally, we request that the Federal Subsistence Board not act in adopting the proposed regulations until the definition of "rural" can be revisited.

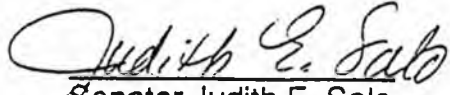
Current regulations identify the communities of Hope, Whittier, Cooper Landing, Niniitchick, Seldovia, Port Graham and Nanwalek as "rural." The proposed regulations would identify "customary and traditional" uses in those communities for specific species. If the current proposal is finalized, and coupled with the definition of "rural", it will have substantial negative repercussions on the Kenai Peninsula as well as Alaska.

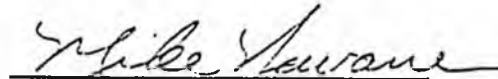
The "rural" determination comment period ended December 10, 1990. The intent of public notice and hearings is to inform those potentially affected by a proposed rule what decisions may be made and then offer a chance for testimony. As the Regional Subsistence Advisory Council was developing the "rural" determination in 1990, no one anticipated the level of deference the Federal Subsistence Board would give them. We do not believe that Kenai Peninsula residents were aware of the potential outcome of the "rural" definition being applied to various communities on the Peninsula.

As noted in the Federal Register, (Thursday January 3, 1991, page 236) ANILCA does not define "rural." On the same page it also states that "rural... is not a static condition and can change". State law, prior to the McDowell lawsuit, defined "rural", for the Kenai Peninsula, as those areas not on the road system. As most Kenai Peninsula residents will testify, they are satisfied with the original state determination. We would submit that the area on the Kenai Peninsula covered by the road system is not rural by any reasonable definition applicable to Alaska.

Finally, it is not the desire of the residents in the affected areas to have this designation imposed on their communities. Overwhelming testimony was given during public hearings opposing the proposed rule.

We respectfully request the Federal Subsistence Board revisit the "rural" designation for Kenai Peninsula communities before finalizing anymore regulations for the Kenai including the "customary and traditional" determination.


Senator Judith E. Salo


Representative Mike Navarre

4/2/95
F.B. MCKEY

United States Department of the Interior

OFFICE OF THE SOLICITOR

APR 1 1995

In reply, please address to:
Main Interior, Room 6456

To: Acting Regional Solicitor, Anchorage

From: Associate Solicitor, Division of Conservation and Wildlife
 Associate Solicitor, Division of Energy and Resources
 Acting Associate Solicitor, Division of Indian Affairs

Subject: Federal Subsistence Management Program: Scope of Agency Authority Under ANILCA Sections 804 and 805(c)

This is in response to your inquiry regarding the Federal Subsistence Management Program. We agree that subsection 805(c) of ANILCA, codified at 16 U.S.C. § 3114(c), generally requires the Federal Subsistence Board (Board) to follow the recommendations of the Regional Councils established pursuant to subsection 808(). Subsection 3114(c) provides that:

The Secretary, in performing his monitoring responsibility pursuant to section 3116 of this title and in the exercise of his closure and other administrative authority over the public lands, shall consider the report and recommendations of the regional advisory councils concerning the taking of fish and wildlife on the public lands within their respective regions for subsistence uses. The Secretary may choose not to follow any recommendation which he determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation is not adopted by the Secretary, he shall set forth the factual basis and the reasons for his decision.

The impetus for the interest in this matter is a recommendation by the Southcentral Regional Council for a subsistence regulation permitting moose hunting by rural residents on public lands on the Kenai Peninsula. If accepted, the Regional Council's recommendation might effectively limit hunting opportunities on the Kenai Peninsula by non-rural residents. The Regional

The Federal Subsistence Board has been delegated Secretarial authority to set seasons and bag limits for subsistence uses of fish and game on the public lands. 50 C.F.R. § 100.10(a); 36 C.F.R. § 242.10(e).

Director, Region 7, Fish and Wildlife Service (FWS), in a memorandum dated March 10, 1995, requested that the Solicitor's Office recommend a course of action to deal with related policy issues in a public forum. Then, on April 4, 1995, the Assistant Regional Director, Subsistence Management, FWS, made recommendations to the Interagency Staff Committee (Staff) as to the appropriate subsistence moose season on the Kani Peninsula. The recommendations included limitations on the subsistence hunt that are inconsistent with the recommendations of the Regional Council. The April 4 recommendation appears to be based on consideration of the subsection 805(c) criteria and concludes that the Regional Council's recommendation would "threaten the conservation of a healthy moose population." However, because subsection 805(c) plays a crucial role in the ANILCA subsistence program and because we are concerned that the April 4 recommendation may violate the requirements of subsection 804, codified at 16 U.S.C. § 3113, we recommend that you provide the following legal analysis to the Chairman of the Board.

As an initial matter, the recommendation in the April 4 memorandum could restrict the subsistence harvest while leaving the non-subsistence harvest undiminished. Under ANILCA section 804, codified at 16 U.S.C. § 3114, non-subsistence uses must be eliminated before subsistence uses may be restricted. To permit hunting by non-rural residents while simultaneously restricting the subsistence hunt, as recommended in the April 4 memorandum, is contrary to section 804. In 1989, the federal district court articulated this standard when it considered the application of Alaska's second subsistence law to the hunting of moose and caribou. Bobby v. State, 718 F. Supp. 764 (D. Alaska 1989).

With regard to any portion of a wildlife population . . . the taking of which must be restricted for conservation purposes, all other uses must be reduced or proscribed before subsistence use is restricted. . . . An established subsistence use of a particular wildlife population must be afforded its statutory preference, and such use may be curtailed or proscribed only as a last resort

Id. at 783.

In addition, the court cautioned that any implementation of the portion of Alaska's second subsistence law that requires a "reasonable opportunity to satisfy subsistence uses" must not adversely impact the subsistence priority guaranteed by section 804 of ANILCA. Id. at 781. We agree with the district court's analysis of the plain language of the statute.

Turning to the matter of subsection 805(c), the language of this provision indicates that the recommendations of the Regional Councils must be followed unless the Board determines that:

(1) the recommendations are not supported by "substantial evidence;" (2) the recommendations violate conservation principles; or (3) the recommendations are detrimental to subsistence needs. This position should not be interpreted as an attempt to discourage pre-proposal interchanges, communications, and discussions among the Board and Staff. Staff should likewise actively work with the Regional Councils in the development of proposals.

However, once a Regional Council has decided on a course of action and makes a proposal to the Board, their proposal should receive deference except in the limited circumstances described in subsection 805(c). If a Regional Council's proposal is rejected, subsection 805(c) requires the Board to set out the factual basis and reason for rejection. A federal district court stated the very rigorous standard to which the Board must adhere in reviewing Regional Council recommendations when it noted that the recommendations were entitled to "very considerable weight." Transcript of Proceedings at 8, Tanana Fish & Game Ass'n v. Alaska, No. 788-804 (D. Alaska) (Aug. 4, 1988) (interpreting the identical standard governing state management pursuant to subsection 805(d), pre-McDowell). Finally, the importance of setting out the factual basis was also demonstrated in the Quinhagak appeal, where the court presented an extensive discussion of subsistence uses and the plain congressional mandate that such uses receive priority and protection. Native Villages of Quinhagak v. United States, 35 F.3d 388, 393-94 (9th Cir. 1994).

A narrow interpretation of subsection 805(c) would be contrary to the canons of construction which require that enactments for the benefit of Native Americans be construed in their favor. Although Title VIII of ANILCA protects subsistence uses of non-Native rural residents, it is viewed as being remedial "Indian legislation" non-retroactive. People of Village of Gambell v. Clark, 746 F.2d 572, 581 (9th Cir. 1984), rev'd on other grounds sub nom., Amoco Production Co. v. Village of Gambell, 480 U.S. 531 (1987). The review by the Board of Regional Council recommendations must therefore reflect this special protection for Alaska Natives' subsistence lifestyle.

In addition, the comprehensive subsistence-use management system envisioned in subsections 805(a) through (c) is informed at its most fundamental level by input from the Regional Councils, the entities most familiar with the wildlife resources and customary and traditional uses. Indeed, Congress found that:

(T)he national interest in the proper regulation, protection, and conservation of fish and wildlife on the public lands in Alaska and the continuation of the opportunity for a subsistence way of life by residents of rural Alaska require that an administrative

structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.

16 U.S.C. § 3111(5).

To conclude, the operative sections of the management scheme encourage maximum local participation such that agency restructuring of Regional Council recommendations is limited by subsection 305(c). The Board should be so advised.

cc: Solicitor
Special Assistant to the Secretary for Alaska

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Notices

Federal Register

Vol. 58, No. 2

Thursday, January 2, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Subsistence Take of Fish and Wildlife on Public Lands in Alaska: Final Rural and Non-Rural Determinations

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice by the Federal Subsistence Board (Board), on behalf of the Department of Agriculture and Department of the Interior land managing agencies in Alaska, announces the final determinations of "rural" and "non-rural" areas and communities in accordance with the procedures described in "Temporary Subsistence Management Regulations For Public Lands in Alaska" published in the Federal Register (55 FR 27114) on June 29, 1990.

DATES: These determinations are effective as of January 2, 1991. The determinations constitute an action of the Board, subject to requests for reconsideration under the procedures outlined in 38 CFR 242.25 and 50 CFR 100.18; the last day for filing such a request for reconsideration of these determinations is February 14, 1991.

ADDRESSES: Appeals should be addressed to the Chairman, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, 3100 Richard Pospahala, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Richard Pospahala, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 207-1401.

SUPPLEMENTARY INFORMATION: Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3112-3125) requires the Secretaries of Agriculture and the Interior to implement a program to grant preference in favor of subsistence uses of fish and wildlife on public lands unless the State of Alaska implements a subsistence program consistent with ANILCA's requirements. The State of Alaska had such a program that was found by the Department of the Interior to be consistent with ANILCA. In December 1989, however, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural limitation in the State subsistence definition, which is required by ANILCA, violates the Alaska Constitution. The Court stayed the effect of the decision until July 1, 1990.

As a result of the decision, the Departments of Agriculture and the Interior were required to take over implementation of title VIII of ANILCA on public lands on July 1, 1990. Federal subsistence management would impact the subsistence use of fish and wildlife resources on public lands in Alaska managed by the Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Indian Affairs, Forest Service, Air Force, Army and various other Federal land managing agencies.

The Board, as the managing entity, started by publication in the Federal Register (55 FR 40897) on October 3, 1990, the process of collecting public comments relating to a number of issues on subsistence management on public lands, including the rural determination process. Again on November 23, 1990 (55 FR 48877), the Board published Notices in the Federal Register explaining the proposed Federal process for making rural determinations, the criteria to be used and the application of those criteria in preliminary determinations. Public meetings were then held in some 58 communities throughout Alaska, specifically to solicit comments on the Federal Subsistence Program, including rural determinations. The period for submitting comments on rural determinations closed on December 30, 1990. In addition to comments in the public meetings attended by some 7,670 persons, the Board received a total of 140 written comments from 34 governmental entities, 33 comments

from organizations and 73 comments from individuals during the comment period.

The definition of rural is, perhaps, the key element in the regulations. The term "rural" was not defined in ANILCA. The Ninth Circuit Court of Appeals ruled in 1938 that the rural definition in the State's 1986 subsistence law was not consistent with ANILCA and the common meaning of the term rural. The legislative history of ANILCA provides some insight. Senate Report 96-113 identified Anchorage, Juneau, Fairbanks and Ketchikan as examples of non-rural communities in 1980 and Barrow, Kotzebue, Nome, Bethel and Dillingham as examples of rural communities. It further states that the rural nature of such communities is not a static condition and can change.

Analysis of Comments

(a) Several people commented that they felt the ANILCA subsistence preference for rural residents of Alaska was unconstitutional and objected to the establishment of regulations which allow for rural subsistence priority. Several comments called for an amendment to ANILCA.

The Departments of the Interior and Agriculture have no authority to make such an interpretation since the rural priority is a provision of Federal law. Only Congress may amend a law. Until such time as the law is changed, the Federal government must provide a subsistence priority to rural Alaskan residents for use of fish and wildlife resources on public lands.

(b) A large number of commenters felt that all Alaskans should receive equal treatment and access to subsistence resources.

Title VIII of ANILCA specifies that rural Alaska residents must be afforded a priority for subsistence use of fish and wildlife resources on public lands.

(c) Some comments addressed the issue of granting subsistence preference based on individual circumstances rather than by community or area.

Although not addressed in the Act, the legislative history clearly indicates the rural/non-rural determinations are to be made on a community or area basis and not on the basis of individual circumstance. The record also indicates that the designation of communities may change over time.

(d) Some commentators believed that the location of one's residence or the size of the community was not indicative of life style and the need for subsistence resources.

It is recognized that many urban residents utilize wild resources as part of their diet; however, as defined by Congress, "subsistence" applies to the customary and traditional usage of fish and wildlife by rural residents. We agree that population estimates are not the only component which should be used to define the character of a community. However, they are an important characteristic. The Ninth Circuit Court of Appeals in *Ketchikan Indian Tribe v State of Alaska* found the State's definition of rural to not be in accordance with ANILCA. The State definition relied totally on socioeconomic characteristics. The Court went on to state: "the term rural is not difficult to understand . . . it refers to areas of the country that are sparsely populated." It gave examples of existing Federal agency use where a base population figure is 2,500 and a set of community characteristic variables are used to allow the population of the community to exceed the 2,500 level and still be rural if the characteristics so indicated.

(e) Many commentators felt that a subsistence priority should be based on and as indicated by income level.

Many individuals may need assistance of various types. Congress did not include dependence as part of its subsistence definition in Section 803 of ANILCA. In contrast, Section 804 of ANILCA does include dependency on the resource and a criterion for implementing subsistence priority.

(f) Some commentators believe that being located on the road system should be used as a basis for making the rural/non-rural determination.

The Board believes that although being located on the road system might be an indicator of non-rural status, the road system is not in and of itself the primary determinant for dividing rural and non-rural communities. A much better primary characteristic is that of population.

(g) Many commentators felt that Alaska Natives, no matter where they live, should be afforded a subsistence priority; others disagreed.

Under ANILCA, a subsistence priority on Federal lands is to be provided only to rural Alaska residents regardless of ethnic background, meaning that Natives and non-Natives in rural areas only will receive this preference. Likewise, since ANILCA specifies rural residents, those individuals living in non-rural areas, even if they are

Natives, do not qualify for a subsistence preference.

(h) Many commentators spoke to a history of fish and wildlife use and customary and traditional practices, desiring that a preference be based on those grounds.

We agree that the use of natural resources are important to the social and cultural well being of many communities throughout Alaska. There is sharing of these resources in every community in Alaska, even Anchorage. The question is to what extent does this take place in a community. A decision to consider any Alaska community non-rural will not prohibit those residents from taking wild resources. It will mean that in times of fish and game scarcity on land and waters included in the Federal subsistence program, they will not have a priority use of those resources.

(i) Some commentators felt that to qualify for a subsistence priority, a person should meet certain residency requirements.

A subsistence user must be an Alaskan resident and eligible to purchase a resident hunting, fishing or trapping license.

(j) Many comments related specifically to the proposed non-rural classification for Sitka. These included comments addressing:

1. Incorrect comparison of the 7,000 population level with the 1988 population of the Sitka City/Borough (8,257) because Sitka has unified its city and borough boundaries. Thus, the Board should either compare the 1980 Ketchikan Borough population (11,318) to the 1988 Sitka Borough population (8,257) or compare the 1980 Ketchikan City population (7,200) to the 1988 population residing within the pre-city/borough unification Sitka City limits.

After evaluating public comments and reexamining community characteristics, it became clear that Sitka possesses both rural and non-rural characteristics; therefore, the Board has determined Sitka to be rural for the purposes of subsistence on Federal lands.

2. The fish and game harvest information for Sitka, obtained from the Tongass Resource Use Cooperative Study, isn't accurate because of the survey methodology. The survey employed a telephone sampling technique in Sitka while household interviews were used in the rest of the communities sampled.

The Study methodology is valid and it is the best data available. The Study does show very close correlation with an earlier study conducted by the Alaska Department of Fish and Game. Also, a comparison of the harvest rates

of Kodiak (a community where household studies have been done and with very similar characteristics) and Sitka shows very similar rates and adds credibility to the Sitka data.

3. If Congress intended communities greater than 7,000 to be non-rural why did they not identify Sitka City, with a 1980 population of 7,900, as non-rural.

The Senate report only identifies examples of non-rural and rural communities to be used as guidelines by the administering entity. The list is not intended to be all inclusive. For example, not all communities which are obviously rural were mentioned. Only Dillingham, Bethel, Nome, Kotzebue, and Bettow were listed as examples of rural communities. Because of the borderline nature of Sitka and because of extensive public testimony indicating rural characteristics, the Board designated Sitka as rural.

4. Another way of defining rural communities is to use a population density approach.

This is a very misleading approach when some communities have a unified City/Borough boundary and other communities do not. Using this approach according to the Sitka position paper would show that Ketchikan has had a density of 9.1 persons/square mile in 1980 while Sitka has a density of 2.8 persons/square mile in 1988. This is very misleading. The unified Sitka City/Borough had a 1988 population of 8,257 people. The City/Borough boundary covers 4,710 square miles. However, approximately 95% of the people live in a core area of approximately 30 square miles. By way of comparison the Municipality of Anchorage only covers 1,938 square miles.

5. The Sitka economy is seasonal. It is based on the seafood, forest products and tourism industries as well as government employment. The first three are seasonal as is even government employment to some extent. Thus indicating a rural nature. In addition, Sitka's unemployment rate and taxable income level indicated it is rural.

All of the above factors are very similar when Sitka is compared to Ketchikan. The economy of Ketchikan is also based on the seafood, timber products and tourism industries as well as government employment. In addition, the taxable income and employment rates are very similar between the two communities.

(k) Many comments related specifically to the proposed non-rural classification for Saxman. These included comments addressing:

1. The use of subsistence resources is being very important to the social and

cultural well being of Saxman residents. This should be an important criterion to be considered when determining whether a community is rural or not.

We agree that the use of natural resources is important to the social and cultural well being of many communities throughout Alaska. There is sharing of these resources in every community in Alaska, even Anchorage. Because of the overriding socioeconomic and cultural characteristics of Saxman, differentiating it from Ketchikan, the Board determined Saxman to be a rural community.

2. Saxman is a rural community because of its character composition and personality not because of the number of people living there.

Saxman possesses both rural and non-rural characteristics; therefore, based on extensive public testimony, the Board has determined Saxman to be rural for the purposes of subsistence on Federal lands.

(1) A few comments related specifically to the proposed non-rural classification for Kodiak. These included comments relating to the high use of fish and game resources.

After evaluating public comments and reexamining community characteristics, it became clear that Kodiak possesses both rural and non-rural characteristics. Therefore, because of the borderline nature of Kodiak as evidenced by extensive public testimony, Kodiak has been determined to be a rural community for the purposes of Federal subsistence management.

(m) Some individuals commented, asking that certain other specified communities be considered "rural", either continuing the State's prior designation or asking the Federal government to change a prior State non-rural designation. Many of these individuals pointed out a traditional use of the resources.

The level of past use is just one characteristic that is used only to modify a preliminary determination based on population level. Additionally, the level of past use is based on community-wide data, not on individual or single family history.

Federal Subsistence Management Program—Rural/Non-rural Determination Process

The Federal government recognized that communities of the same size may vary greatly in character for a variety of reasons. Therefore, no single population number adequately serves as a dividing line between rural and non-rural communities. Before examining community characteristics communities that are socially and economically

integrated were aggregated. The criteria used to determine if communities are socially and economically integrated includes: (1) Do 15% or more of the working people commute from one community to another; (2) do they share a common school district; (3) are daily or semi-daily shopping trips made. The aggregation criteria were developed by working with the Institute of Social & Economic Research, the Alaska Department of Labor and the Municipality of Anchorage.

Communities were aggregated according to these criteria: the population for the community or area was determined; and preliminary rural/non-rural screening of communities began. The process to determine rural was designed to incorporate the common meaning of rural and is based on two rebuttable presumptions as described below. A community or area of less than 2,500 population is deemed rural unless it exhibits characteristics of a non-rural nature or area or is part of an urbanized area. The number 2,500 was selected because it is the figure used by the U.S. Census Bureau to divide rural from non-rural. A community between 2,500 and 7,000 bears no presumption as to its rural or non-rural status. Some communities that fall in this population range may have rural characteristics.

Communities 7,000 or greater in population are presumed to be non-rural. The 7,000 population level was chosen because Ketchikan, the smallest of the non-rural communities mentioned in the Senate report, was approximately that size when ANILCA was passed and consequently is an indicator of Congressional intent. Communities in Alaska can approach and may rarely exceed a population level of 7,000 and still be rural in character.

This definition and process recognizes that population alone is not the sole indicator of a rural or non-rural community. This flexibility is consistent with approaches other Federal agencies have used to determine if communities are rural. Indicators which the Federal Subsistence Board evaluates to decide if a community is rural or non-rural in character are: use of fish and game; development and diversity of the economy, community infrastructure, transportation, and educational institutions.

Use of fish and game includes the variety of species used per household, the participation of households using subsistence resources (percent of households in community), and the level of harvest based on the average pounds per-capita consumed. The economy of an area was considered to include

whether employment was considered high, moderate, low, seasonal or year-round; the unemployment rate; and 1985 average taxable income level, the diversity of services within the community or area, and the cost of food index.

Community infrastructure as a measure of urban development (based on the fact that electricity costs are normally lower in urban areas versus rural areas) included the 1988 average cost of electricity per kilowatt hour. Transportation included the variety and means, the predominate methods and the number of miles of road system. Evaluation of educational institutions included the level of education provided in a community.

The community characteristics were developed through coordination with the Alaska Department of Labor, Alaska Department of Revenue, the Institute of Social and Economic Research, the Alaska Department of Commerce and Economic Development, the Alaska Department of Fish & Game and the Alaska Energy Authority.

The following communities/areas have been determined by the Board to be non-rural. Communities which are grouped (below) are considered to be socially and economically integrated. All communities or areas not listed are determined to be rural.

Non-Rural Communities/Areas in Alaska for the Determination of Subsistence Priorities

Municipality of Anchorage
Kenai Area (including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kaslof and Ciam Gulch)
Wasilla Area (including Palmer, Wasilla, Sutton, Big Lake, Houston and Bodenbergturte)
Fairbanks North Star Borough
Juneau Area (including Juneau, West Juneau and Douglas)
Ketchikan Area (including Clover Pass, North Tongass Highway, Ketchikan East, Mountain Pass, Herring Cove, Saxman East, and parts of Pennock Island)
Homer Area (including Homer, Anchor Point, Kachemak City and Fritz Creek)
Seward Area (including Seward and Moose Pass)
Valdez Area, Valdez
Adak

Title VIII allows for reasonable regulations to provide access and to protect the viability of all wild renewable resources. The protection of wild renewable resources and the opportunity to utilize those resources on public lands by rural Alaskan residents for subsistence purposes are of

paramount importance to the Federal government and to the public as a whole.

Curtis V. McVee,

Chairman, Federal Subsistence Board,
Department of the Interior.

Michael A. Barton,

Regional Forester, USDA—Forest Service.

[FR Doc. 91-11 Filed 1-2-91; 8:46 am]

SHLWNG CODE 410-45-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held January 30, 1991, 9:30 a.m. in the Herbert C. Hoover Building, room 1529, 14th & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Approval of minutes.
3. Presentation of papers or comments by the public.
4. Report on status of Core List 3 (Telecommunications).

Executive Session

3. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OPA/BXA, room 1800, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20220.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 8829, U.S. Department of Commerce, Washington, DC 20220. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377-2533.

Dated: December 23, 1990.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 91-52 Filed 1-2-91; 3:45 am]

SHLWNG CODE 218-07-M

International Trade Administration

(A-588-019)

Cyanuric Acid and Its Chlorinated Derivatives From Japan; Preliminary Results of Antidumping Duty Administrative Reviews, and Intent to Revoke on Trichloro Isocyanuric Acid and to Revoke in Part on Dichloro Isocyanurates.

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Preliminary results of antidumping duty administrative reviews, and intent to revoke on trichloro isocyanuric acid and to revoke in part on dichloro isocyanurates.

SUMMARY: In response to requests by both the petitioner and respondents, the Department of Commerce has conducted administrative reviews of the antidumping duty orders on cyanuric acid and its chlorinated derivatives from Japan. The reviews cover two manufacturers/exporters of this merchandise to the United States, Nissan Chemical Industries, Ltd., and Shikoku Chemicals Corporation, and two consecutive annual periods from April 1, 1987 through March 31, 1989, for the order on cyanuric acid, and from April 1, 1987 through November 30, 1988,

for the orders on dichloro isocyanurates ("DCA") and trichloro isocyanuric acid ("TCA"). It also covers the two trading companies through which the respondents sell in the United States, Mitsubishi Corporation and Toyo Menka Kaisha, Ltd. We published a tentative determination to revoke the orders on DCA and TCA on November 21, 1988.

Our reviews indicate zero or *de minimis* weighted-average dumping margins for Nissan Chemical Industries for DCA and TCA for both review periods. They also indicate the existence of dumping margins for Shikoku Chemicals Corporation for DCA for both review periods, and either zero or *de minimis* weighted-average dumping margins for TCA for the review periods.

As a result of our reviews, we intend to revoke the order in its entirety on TCA, and to revoke the order on DCA only with respect to Nissan Chemical Industries. Because we found margins on DCA with respect to Shikoku Chemicals Corporation, we do not intend to revoke the order on DCA with respect to Shikoku.

We invite interested parties to comment on these preliminary results and intent to revoke in part.

EFFECTIVE DATE: January 3, 1991.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert Marekic, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20220; telephone: (202) 388-5255.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 1988, the Department of Commerce ("the Department") published a notice of "Opportunity to Request an Administrative Review" (53 FR 11540) of the antidumping duty orders on cyanuric acid and its chlorinated derivatives from Japan (49 FR 18148; April 27, 1984). On April 29, 1988, the petitioner, Monsanto Company, and respondents, Shikoku Chemical Corporation and Nissan Chemical Industries, Ltd., requested administrative reviews of the antidumping duty orders. We initiated the reviews, covering the period April 1, 1987 through March 31, 1988, on May 23, 1988 (52 FR 18324). We published a tentative determination to revoke the orders on DCA and TCA on November 21, 1988 (53 FR 46896).

On March 31, 1989, the Department published a notice of "Opportunity to Request an Administrative Review" (54 FR 13211) of the antidumping duty order on cyanuric acid and its chlorinated derivatives from Japan (49 FR 18148:

Summary of Southcentral Regional Council Recommendations for Kenai C&T Determinations
February 28 - March 2, 1995
(Prepared March 7, 1995)

Unit	Species	Communities	Season and Harvest Limit Regulations
Unit 7	Moose	Hope, Cooper Landing, Whittier	
	Caribou	Hope, Cooper Landing	
	Sheep	Hope, Cooper Landing, Ninilchik	
	Goat	Hope, Cooper Landing, Ninilchik	
	Black Bear	Hope, Cooper Landing	
	Brown Bear	No C&T uses on Federal lands	
Unit 15(A)	Moose	Hope, Cooper Landing, Ninilchik, Seldovia	1 antlered bull by Federal registration permit, August 10 - September 20
	Caribou	Hope, Cooper Landing, Ninilchik	
	Sheep	Cooper Landing	
	Goat	No C&T uses on Federal lands	
	Black Bear	Hope, Cooper Landing, Ninilchik	
	Brown Bear	No C&T uses on Federal lands	
Unit 15(B)	Moose	Hope, Cooper Landing, Ninilchik, Seldovia, Nanwalek, Port Graham	1 antlered bull by Federal registration permit, August 10 - September 20
	Caribou	Ninilchik	
	Sheep	Cooper Landing, Ninilchik	
	Goat	Cooper Landing, Ninilchik	
	Black Bear	Hope, Cooper Landing, Ninilchik	
	Brown Bear	No C&T uses on Federal lands	

foraker

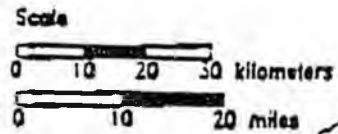
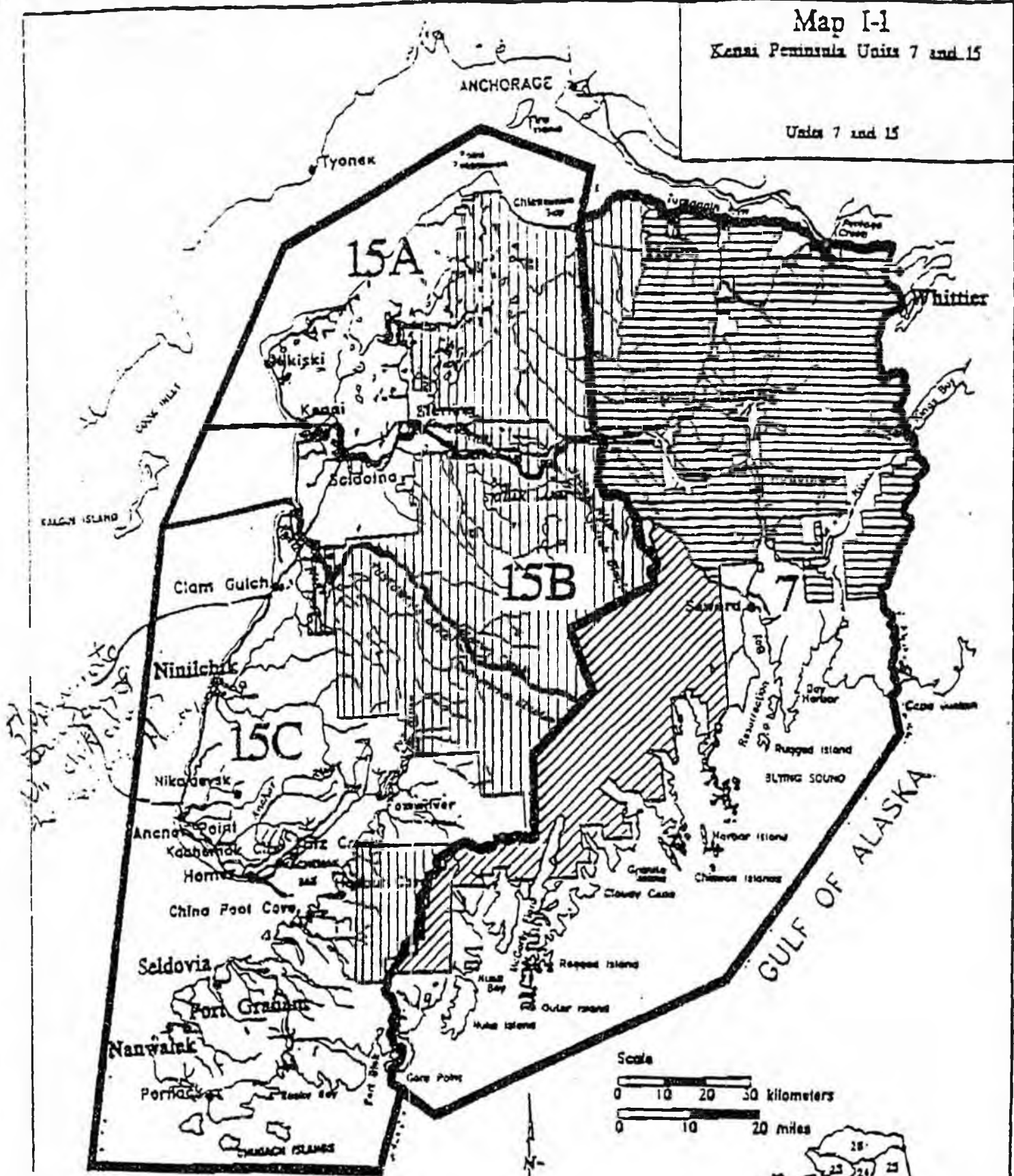
Summary of Southcentral Regional Council Recommendations for Kenai C&T Determinations
February 28 - March 2, 1995
(Prepared March 7, 1995)

Unit	Species	Communities	Season and Harvest Limit Regulations
Unit 15(C)	Moose	Ninilchik, Nanwalek, Port Graham, Seldovia	1 antlered bull by Federal registration permit. August 10 - September 20
	Caribou	Ninilchik, Nanwalek, Port Graham, Seldovia	
	Sheep	Ninilchik, Nanwalek, Port Graham, Seldovia	
	Goat	Ninilchik, Nanwalek, Port Graham, Seldovia	
	Black Bear	Ninilchik, Nanwalek, Port Graham, Seldovia	
	Brown Bear	Ninilchik, Nanwalek, Port Graham	






1. The Council intended that the existing antler restrictions (i.e. spike, fork, 50" plus) in State regulations would not apply to the Federal subsistence hunt.
2. The Council did not estimate that the Federal subsistence season would require closure of Federal public lands to non-subsistence hunters. However, they understood that a technical analysis of this question is required for the Board's consideration.
3. The Council was apprised that existing prohibitions on the use of ATV's in the Kenai NWR would remain in place.
4. The Council was apprised that existing Federal subsistence regulations require the salvage of edible meat from brown bears. Nonetheless, the Council recommended a finding of C&T use of brown bear in Unit 15(C) on the basis that even though use for food would be very rare, a tradition of use of fur and parts in ceremonies and adornment should be accommodated. This might be taken to require a change in the salvage requirement.
5. The Council was apprised that a technical analysis of the proposed season for compatibility with the purposes of the Kenai Peninsula NWR is required prior to the Board's action.
6. The Council indicated the intention to define "Ninilchik" to include residents along the Sterling between the boundaries of the Kenai and Homer Non-rural Areas, including the "tributary" roads leading directly into the highway in this portion. The Homer Rural Area, for which no C&T uses were recommended, is found just to the northwest and the east of the Homer Non-rural Area.

Map I-1 Kenai Peninsula Units 7 and 15

Units 7 and 15



LEGEND

	FWS Administered Land		Sub-Unit Boundaries
	NPS Administered Land		Areas
	USFS Administered Land		



**UCIDA****UNITED COOK INLET DRIFT ASSOCIATION**

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May 3, 1995

By Telefax

Senator Judy Salo
Representative Mike Navarre
State Capitol
Juneau, AK 99801

Dear Senator Salo and Rep. Navarre,

I would like to thank you for your May 2, 1995 letter to the Federal Subsistence Board requesting that it "revisit the rural designation" for Kenai Peninsula communities.

Under federal law - ANILCA - once an area has been designated "rural" the consequences are inevitable and irreversible. The subsistence priority for "rural" residents is a legal privilege that requires the elimination of all other uses prior to any limitation being placed on subsistence uses.

I would like to stress that even for a "rural" resident granted a subsistence preference a heavy price must at times be paid. That is to say that even a subsistence "user's" right to access a resource for commercial or recreational purposes must be eliminated to supply all subsistence uses. Further, if the fish or game resource involved is not numerous enough to supply all subsistence users then even the "subsistence" right may be eliminated for many as Tier II criteria are applied.

It is clearly not in anyone's best interest to have a legal subsistence priority apply in areas of either high population densities or ready access to fish and game resources such as the Kenai Peninsula.

UCIDA has long recognized this fact and tried - unsuccessfully - to oppose positive "rural" determinations for the Kenai Peninsula. Further, working with UFA, UCIDA requested our congressional delegation to amend ANILCA "to reflect the definitions in state statutes" - including the state definition of rural (please see UFA Letter to Senator Stevens, May 19, 1989 and Senator Stevens Reply of June 2, 1989, enclosed).

In conclusion, UCIDA appreciates your efforts on behalf of the Kenai Peninsula residents. Your efforts with the Federal Subsistence Board and HJR48/SJR28 are to be commended. UCIDA also continues to support SJR19 as yet another "partial" solution. We would like to note, however, that without clarifying definitions being inserted in ANILCA the subsistence "dilemma" will not be resolved (please see UFA Comments on Subsistence, June 20, 1990, enclosed).

Sincerely,



Theo Matthews,
Executive Director

cc: Governor Tony Knowles
Lt. Governor Fran Ulmer
Senator Frank Murkowski
Senator Ted Stevens
Senator John Torgerson
Congressman Don Young
Representative Gail Phillips
Alaska Outdoor Council
UFA