

HJR

4

ALASKA STATE LEGISLATURE

REPRESENTATIVE KURT OLSON

- Chair, Labor and Commerce
- Vice-Chair, Oil and Gas
- Member, Community and Regional Affairs

Session: January – May
State Capitol
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Official Business

SPONSOR STATEMENT

HIR 4 – Federal Subsistence Board Reconsideration

This resolution requests the Federal Subsistence Board reconsider its November 2006 decision regarding subsistence fishery priority given to Ninilchik residents.

There are a number of issues worthy of consideration when debating the merits of this resolution; below is a brief list.

- The evidence presented to the Board did not demonstrate that the salmon, rainbow trout, char and other fish stocks in described area, are the same fish stocks as those present in areas much closer to and historically and much more frequently used by Ninilchik residents, such as Ninilchik River and Deep Creek.
- The Board made its customary and traditional use determination without substantial supporting evidence and without a reasonable examination of the eight regulatory factors for making customary and traditional use determinations with regards to the various fish stocks and areas covered by the determination.
- The Board improperly and unreasonably denied the Alaska Department of Fish & Game Board Liaison the ability to provide and discuss relevant information during the critical point of Board deliberations and in doing so, violated its own regulatory and Secretarial direction.

In short, the Board seems to have based it's ruling on anecdotal evidence rather than facts available for review. Many facts are readily available and a review of State's Requests for Reconsideration will serve to enlighten even further.

While in the House Special Committee on Fisheries, HJR 4 was amended to add the communities of Hope and Cooper Landing as other communities who are included in customary and traditional use determinations by the Board. Additionally, the Secretaries of the Interior and Agriculture, the members of the Federal Subsistence board, the Office of Subsistence Management and the U.S. Department of Interior were all added to the list of recipients. Electronic transmission was also added to the methods of distribution.

With this resolution, I am NOT advocating for or against subsistence rights for any person or community. It is my hope that the Federal Subsistence Board will revisit these C&T determinations, allowing for the States presentation of applicable facts and to take these and previous facts given in testimony, into account and follow more closely it's eight regulatory criteria to be used in making C&T determinations. When a governing body does not follow established criteria in making its decisions, we begin to travel the path down a slippery slope.

It is my hope that passage of this resolution and the intervention of Alaska's congressional delegation will help to sway the Board in its reluctance to reconsider its decision.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHJR 4(FSH)
 (H) Publish Date: 3/5/2007

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Kenai/Kasilof Subsistence Priority RDU _____
 Sponsor Rep. Olson Component _____
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: House Fisheries Committee Staff Phone 465-3923
 Division _____ Date/Time _____
 Approved by: Rep. Seaton, Chairman Date 3/2/2007
 Agency Legislature

b

HOUSE COMMITTEE REPORT

3.5.07

(9)

Date Referred to Committee: January 16, 2007

FURTHER REFERRALS: Resources

Date of Committee Action: 3/2/07

The HOUSE SPECIAL COMMITTEE ON FISHERIES considered:

HJR 4

HOUSE JOINT RESOLUTION NO. 4

NINILCHIK FISHING PRIORITY

Requesting the Federal Subsistence Board to reconsider its decision regarding the subsistence fishery priority given to Ninilchik residents.

Recommends it be replaced with [] HCS or [X] CS for HJR 4 (FSH)
For Senate Bills with new title: [] Technical Title [] New Title: HCR [] Same Title [X] New Title

- [] attach amendments
[] add new referral to Committee
[] Letter of Intent Committee

- List of abbrev for Depts: ADM, CED, COR, CRT, FED, DIC, DFG, GOV, HSS, LFG, LAW, LWF, MVA, DNR, DPS, REV, DOT, UA

Table with columns: List by Dept(s), *FN#, Fiscal, Indet., Zero. Row 1: FSH, CMIE, 1, [], [], [X]

Table with columns: List by Dept(s), FN#, Fiscal, Indet., Zero. All cells are empty.

Table with columns: Signing with recommendations, Printed Last Name, DP, DNP, NR, AM. Includes signatures for Johnson, LeDOUY, EDGMON, and SEATON.

REQUEST FOR RECONSIDERATION OF FEDERAL SUBSISTENCE BOARD DETERMINATIONS ON PROPOSAL FRFR 06-02/03/08, including the Board's Determination that the Community of Ninilchik Has Customarily and Traditionally Harvested for Subsistence Purposes All Fish Located Within the Boundaries of the Kenai National Wildlife Refuge And Chugach National Forest, including the Upper Kenai River, Russian River, Swanson River, and their Lakes and Drainages

By State of Alaska

I. Introduction

The State of Alaska, through the Alaska Department of Fish and Game (ADF&G), respectfully requests that the Federal Subsistence Board (Board) reconsider and rescind its decision of November 17, 2006 upon Proposal FRFR 06-02/03/08, providing "to the community of Ninilchik a customary and traditional use determination for all fish in the waters north of and including the Kenai River drainage, within the Kenai National Wildlife Refuge and Chugach National Forest within the Kenai Peninsula district." See Transcript of Federal Subsistence Board November 16-17, 2006 Work Session (hereinafter "11/16-17/06 Tr."), at p. 169.¹

Reconsideration is required because, in adopting that final rule, "the Board's interpretation of information, applicable law, or regulation [was] in error or contrary to existing law." 36 CFR §242.20(d); 50 CFR §100.20(d). In addition, reconsideration is required because, in making its determination, the Board assumed incorrect information, including unsupported speculation regarding fish stocks, resulting in a determination based on speculation. The Board must instead consider real, factual information not previously considered by the Board, of the type on which this request is partly based. *Id.*

The Board's aforementioned finding that the residents of Ninilchik have customarily and traditionally used the numerous fish stocks in the area affected, and thus may have a preferential right to harvest those fish by preferential means, is inconsistent with applicable law, including the Board's regulations in 36 CFR §242.16 and 50 CFR §100.16, will create a preference for uses that are not within the definition of "subsistence uses" in Section 803 of the Alaska National Interest Lands Conservation Act (ANILCA), does not properly balance or further the competing purposes of ANILCA recognized by the Court in *Ninilchik Traditional Council v. United States*, 227 F.3d 1186, 1193 (9th Cir. 2000), and will cause unnecessary restriction of non-subsistence uses in violation of

¹ As set out later in this Request for Reconsideration, the State also requests that the Board reconsider its failure to definitively decide ADF&G's previous requests for reconsideration dated May 5, 2006, of the Board's prior customary and traditional use determinations for Ninilchik as to the Kasilof River drainage fishery and for Cooper Landing and Hope as to the "Kenai River Area" drainage fisheries.

Section 815 of ANILCA. More detailed reasons for this Request for Reconsideration (RFR) include the following:

- The Board made its customary and traditional use determination without substantial supporting evidence and without a reasonable examination of the eight regulatory factors for making customary and traditional use determinations with regard to the various fish stocks and areas covered by the determination.
- The Board incorrectly determined that fishing for all fish in the affected, widespread area far removed from the community of Ninilchik is a customary and traditional subsistence use of that community without adequate supporting information for that determination on the record, thus rendering the determination arbitrary and capricious.
- The evidence presented to the Board did not demonstrate a long-term consistent, recurring pattern of subsistence use by the community of Ninilchik of the affected fish in the distant, expansive location of the determination.
- The evidence presented to the Board did not demonstrate that the salmon, rainbow trout, char, and other fish stocks in that distant, widespread area are the same fish stocks as those present in areas much closer to and historically and much more frequently used by Ninilchik, such as the Ninilchik River and Deep Creek.
- The Board unreasonably declined to defer consideration of the proposal which it determined pending compliance with directions from the Secretary of the Interior requiring the Board to develop written procedures and policies for rendering customary and traditional use determinations.
- The Board violated its own regulatory procedures and Secretarial direction by improperly and unreasonably denying the Alaska Department of Fish and Game Board Liaison the ability to provide and discuss relevant information during the critical point of Board deliberations resulting in the challenged determination.
- The Board lacked necessary jurisdiction to make the traditional and customary use determination because the Federal Government has not legally and properly established reserved water rights in the waters covered by its determination, as required by law.

This RFR is being submitted at this time because the State has been informed by the Regulation Specialist for the federal Office of Subsistence Management (OSM) that in his opinion the action which is the subject of this RFR went into effect immediately.²

² Personal communication between Sarah Gilbertson and Bill Knauer on November 28, 2006.

PAGES 3 – 6 have intentionally been left out of this for brevity.

incorporated into the record of the Board's November 16-17, 2006, proceedings through the comments of the State of Alaska representative.¹⁸

In that October 26, 2006, correspondence and also at the Board proceedings, the State expressed its deep concern "that the Federal Subsistence Board is circumventing its normal public process in an effort to hastily grant the community of Ninilchik customary and traditional use of the Kenai River drainage based upon a faulty interpretation of Department [ADF&G] data" and Dr. Wolfe's unpublished papers regarding Ninilchik household and tribal use surveys. The State explained its concerns, including OSM staff's inaccuracies, mischaracterizations, and misanalysis of data being relied on by the Board and the lack of public notice and meaningful opportunity for the State and public to be timely heard.¹⁹

In addition, the State objected to the Board making determinations without the benefit of developed written procedures and policies for making C&T use determinations, as directed by the Secretary of the Interior on October 27, 2005, and the State stated its reasons for those objections.²⁰

It was also shown that the evidence is insufficient -- in terms of frequency of use, area of use, community use, lifetime use, or otherwise -- to support a determination that there has been a long-term consistent, recurring pattern of customary and traditional use for subsistence by Ninilchik of the fisheries located within the Kenai National Wildlife Refuge or Chugach National Forest, as is required by ANILCA and the regulations governing such determinations.²¹ Among other reasons, it was pointed out that OSM's analysis misinterpreted and misused ADF&G survey findings; that the eight factors for determining C&T use under the Board's regulations were not met; that at most only 7% of Ninilchik households claimed annual use of the upper Kenai area fisheries at issue in even recent years, that only 13% (including the 7%) claimed frequent use (meaning almost every year) of that area for any of their fishing, that only 4% more claimed intermittent use, that only a total 28% of Ninilchik residents claimed any such use ever during their lifetimes, and that only 2-3% identified taking trout or any species of fish other than salmon from that area (and only 4% salmon); that Ninilchik residents had their highest use of the fisheries closest to Ninilchik (such as Ninilchik River and Deep Creek), used the lower Kenai River some, and used the upper Kenai River drainage areas "farther

¹⁸ 11/16-17/06 Tr. pp. 121-127, 161-162. The State also submitted written comments into the record entitled "ADF&G Page-by-Page Detailed Comments on [OSM] Staff Analysis FRFR06-02/03/08 dated October 31, 2006" after that subsequent OSM Analysis was issued. *Id.* At 121-122.

¹⁹ Campbell 10/26/06 Correspondence at 1-2; 11/16-17/06 Tr. at 122, 126.

²⁰ *See, e.g.*, Campbell 10/26/06 Correspondence at 2; 11/16-17/06 Tr. at 126-127.

²¹ *See, e.g.*, Campbell 10/26/06 Correspondence at 3-4 & attachments thereto; 11/16-17/06 Tr. pp. 122-134, 161-162.

from the community" least; that Ninilchik and the NTC had not harvested all the fish they could under generous state-issued educational fishery permits already existing on the Kenai Peninsula closer to their homes; that no harvest *amounts* for fish taken by residents of Ninilchik in the upper Kenai areas covered by the Board's new C&T determination had been shown; that the sparse participation levels for Ninilchik residents of the upper Kenai River drainages demonstrated more of a *sportfishing* use (rather than traditional subsistence use), which was made easy by highway access, not unlike the use of that same area to harvest fish by residents of Anchorage and other urban areas; that there was little to no evidence of Ninilchik's use of that distant Kenai area prior to construction of the highway linking Ninilchik (and much of the rest of Alaska) to that area; that heretofore subsistence fishing by traditional subsistence means such as netting had not been allowed within that area under federal or state law; and that subsistence is not even listed as one of the purposes of the Kenai National Wildlife Refuge (explicitly created instead to provide opportunities for fish and wildlife recreation, etc.).²² Even OSM's cultural anthropologist, H. Armstrong, who characterized Dr. Fall's surveys of Ninilchik households for ADF&G as "thorough", scientific, and "of the entire community", also acknowledged: "I mean there's no – nobody here is saying that the Ninilchik people used the Kenai River to a great extent. I mean that's a fact that it's not a really heavily used area [by Ninilchik], they're harvesting most of their resources close to the community."²³

Furthermore, ADF&G was arbitrarily and capriciously denied the opportunity to be fully heard on those matters by being cut off during Board deliberations on the subject, upon the request of a Board member and upon incorrect advice of the Solicitor's Office to the Board Chair, in violation of the Board's own procedures and Secretarial direction.²⁴

Very soon after making that erroneous ruling prohibiting the State from participation, the Board then introduced speculation into its deliberations and improperly relied upon that speculation as an important part of making its positive C&T determination. It speculated that the salmon, trout, and other fish stocks in the distant, widespread drainages of the Kenai National Wildlife Refuge and Chugach National Forest under consideration, including the Kenai River, Russian River, Swanson River, Summit Lake, and Resurrection Creek drainages, are the "same stock" as the fish in the

²² *Id.*

²³ 11/16-17/06 Tr. at 87.

²⁴ See 11/16-17/06 Tr. 161-163 (improperly prohibiting the State of Alaska representative from participating during deliberations); Correspondence in 2004 from Secretary Norton directing otherwise, attached hereto as Attachment 3; Transcript of December 11-12, 2006, Board Meetings (acknowledgement by Board Chair of erroneous ruling on November 17, 2006 improperly preventing State from participation contrary to Secretarial intent).

areas much closer to and much more commonly used by Ninilchik, such as the Ninilchik River and Deep Creek.²⁵

However, *no* evidence, substantial or otherwise, had been presented that could support that speculation.²⁶ To the contrary, that topic did not arise until very late in the Board's deliberations, after all information had been submitted to the Board, none of which included factual information about specific fish stocks. The topic arose only in response to Board concerns that a C&T use for fishing by Ninilchik in the faraway Kenai River Area under consideration had not been shown. At that juncture, the Board's Solicitor countered: "We're trying to determine if there were customary and traditional uses of a *stock or population, that's all. * * ** And we're not – as far as I can tell, we're not tied to a location. It [where the use occurred or is created] could be on the Kenai River, it could be off, we're talking about the population and stock. There's a long, long stretch of fishable water where that stock or population could be harvested." 11/16-17/06 Tr. at 166 (emphasis added). Board Chairman Fleagle then immediately responded: "I'm glad you made that point. * * * And obviously this is going to be another one of those decisions where my vote is either going to allow this thing to pass or not [In my opinion] we are not looking at whether there is just a defined pattern of use for that portion of the river system that happens to be Federal, for the community of Ninilchik and Cooper Landing and Hope on the Kenai River To me it's pretty clear that if you take that entire river system and even that entire area, if you include other river systems, other than the Kenai, you got the Kasilof, you got the Ninilchik, you got Deep Creek, you got several different systems that could be defined as the same fish stock, I think it's overwhelmingly evident that you do have customary and traditional use, and that's where I have to fall." *Id.* at 166-167 (emphasis added). Immediately thereafter, the vote of the Board was taken and the motion to grant Ninilchik a C&T determination for the broad scope of the "Kenai River area" passed 5 to 1, with the last voter, Board member Oviatt, commenting: "I'm going to vote aye. And I was swayed by our Chairman" *Id.* at 168-169.

Indeed, it could be shown that the Board's speculation on that topic, which was decisive, is incorrect, but as noted the opportunity to do so was not given. If given the opportunity to address that topic the State could show that the salmon and other fish stocks, including trout and char, of the distant Kenai River drainages, streams and other water bodies affected by the Board's C&T determination, are not the same fish stocks as exist for the Ninilchik River, Deep Creek, Kasilof River or other streams and rivers within the Kenai Peninsula District. They are not one homogenous fish stock.²⁷ The

²⁵ 11/16-17/06 Tr. pp. 166-169.

²⁶ *Id.*, Tr. pp. 78-169.

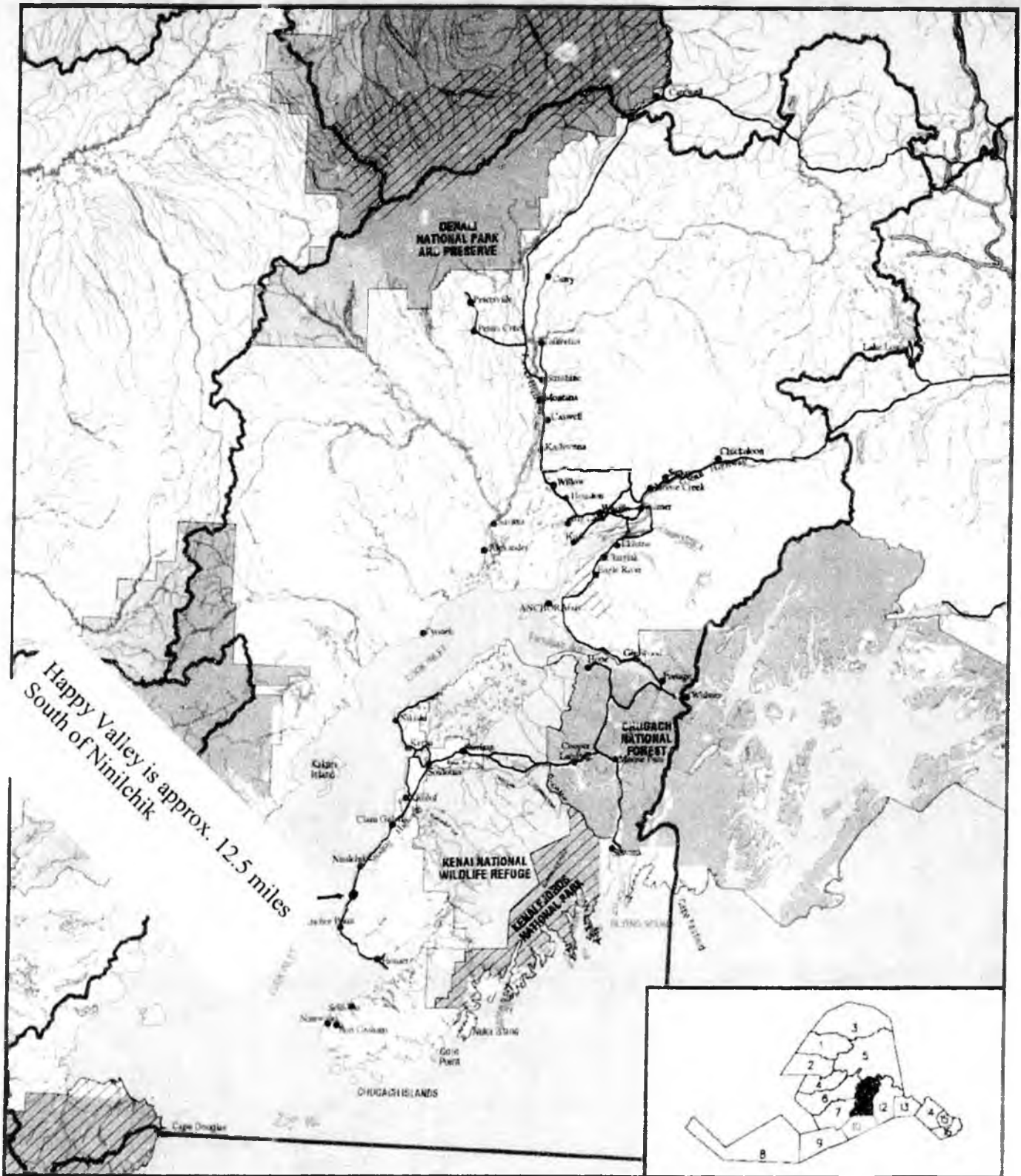
²⁷ For example, the National Marine Fisheries Service Northeast Fisheries Science Center (http://www.nefsc.noaa.gov/techniques/tech_terms.html#sa2) gives the following definition: "Stock: A part of a fish population usually with a particular migration

State requests Board reconsideration in order to be given the opportunity to show that. Otherwise, the Board's determination will remain founded on unsupported speculation contrary to law.

In addition, the State challenged the Board's claim to jurisdiction to make that C&T use determination and other determinations at issue here and in the additional RFRs being filed by the State this month and previously, because the Federal Government has not legally and properly established water rights in the waters covered by those determinations, as set out and pending in *Katie John, Gerald Nicolia, et al., Plaintiffs, v. The United States of America, et al., Defendants*, United States District Court for the District of Alaska Case No. A05-0006-CV (HRH) (Consolidated), incorporated herein by reference.

The effect of the Board's regulatory C&T determination is to provide a federal preference to residents of Ninilchik for harvest of all fish, including all types of salmon, Dolly Varden, rainbow trout, char, lake trout, grayling, and burbot, in all waters of the Kenai Peninsula District north of and including the Kenai River, Russian River, Swanson River, and their lakes and drainages within and adjacent to the boundaries of the Kenai National Wildlife Refuge and Chugach National Forest, as more fully described above. Nonlisted rural residents, along with other state users, of these highly popular and heavily used water bodies will not be eligible to participate in these federal fisheries and will be limited to participation in state fisheries. This federal customary and traditional use determination can be expected to lead to an increased harvest of fish, such as salmon, eligible for limited harvest within the area under state regulations, and to the harvest of other fish, such as rainbow trout, not generally eligible for harvest under state regulations within the area.

pattern, specific spawning grounds, and subject to a distinct fishery." The Washington Department of Fisheries has defined fish stock as "The fish spawning in a particular lake or stream(s) at a particular season, which fish to a substantial degree do not interbreed with any group spawning in a different place, or in the same place at a different season." WDF 1993, "1992 Washington State Salmon and Steelhead Stock Inventory". Similarly, as early as 1939 in the American Association for the Advancement of Science, Publ. 8, p. 106, it was stated: "The salmon of a given species may in locality, e.g., a river, constitute a more or less distinct entity, for which the name 'stock' is to be preferred." In other words, the term "fish stock" denotes a fish of a particular species which may be found in a specific stream during a particular season, or at most, the fish of a particular species which may be found within a specific drainage during a particular season. Further information on the subject, particularly as it relates to the different fish stocks indiscriminately grouped together in the Board's determinations, can be provided to the Board by ADF&G senior biologists, including John Hilsinger and Jeff Regnert.



ATTACHMENT 2

**REQUEST FOR RECONSIDERATION OF HOPE AND COOPER LANDING
PORTION OF FEDERAL SUBSISTENCE BOARD PROPOSAL WP06-09
By State of Alaska**

Pg 1 of ADF&G
Request for Reconsideration for:
Hope & Cooper Landing relating to
Kenai River

I. Introduction.

The State of Alaska, through the Alaska Department of Fish and Game ("ADF&G"), respectfully requests the Federal Subsistence Board (Board) to reconsider those portions of its January 13, 2006, decision on Proposal WP06-09, which adopts final rules establishing customary and traditional use determinations for the communities of Hope and Cooper Landing for the Kenai River drainage and waters north of the drainage. A separate request regarding those portions of the determination relating to Ninilchik and the Kasilof River drainage is being submitted. Reconsideration is not requested for the portions of FP06-09 relating to Tuxedni Bay.

Reconsideration is required because, in adopting the final rule, "the Board's interpretation of information, applicable law, or regulation [was] in error or contrary to existing law," and because new "information not previously considered by the Board" demonstrates that the Board's determination was based on incorrect information and assumptions. 36 C.F.R. § 242.20(d); 50 C.F.R. § 100.20(d).

The finding of customary and traditional use for the communities of Hope and Cooper Landing for the Kenai River drainage does not further ANILCA's purpose of providing an opportunity for rural residents engaged in a subsistence way of life to continue to do so, does not balance the competing purposes of ANILCA, is inconsistent with 36 C.F.R. § 242.16 and 50 C.F.R. § 100.16, creates a preference for uses that are not within the definition of "subsistence uses" in Section 803 of ANILCA, and will cause unnecessary restriction of nonsubsistence use in violation of section 815 of ANILCA. This determination was adopted despite a lack of support by residents of the area; was based on data that had not been fully analyzed; and was made without a reasonable examination of the eight regulatory factors for making customary and traditional use determinations. Further, the Board unreasonably declined to defer consideration of the proposal pending compliance with directions from the Secretary requiring the Board to develop written procedures or policies for customary and traditional use determinations. Because the adopted regulation designates fishing in an area as a customary and traditional use when such a designation was not supported on the record, it is arbitrary and capricious. As required by 36 C.F.R. § 242.20(d)(4) and 50 C.F.R. § 100.20(d)(4), a detailed statement follows.

**REQUEST FOR RECONSIDERATION OF NINILCHIK PORTION
OF FEDERAL SUBSISTENCE BOARD PROPOSAL WP06-09
By State of Alaska**

I. Introduction.

The State of Alaska, through the Alaska Department of Fish and Game ("ADF&G"), respectfully requests that the Federal Subsistence Board (Board) reconsider those portions of the January 13, 2006, decision on Proposal WP06-09, adopting final rules establishing customary and traditional use determinations for the community of Ninilchik for the Kasilof River drainage, published in the Federal Register of March 29, 2006. A separate request for reconsideration is being submitted for those portions of the decision relating to Hope and Cooper Landing. Reconsideration is not being requested for the portions of FP06-09 relating to Tuxedni Bay.

Reconsideration is required because in adopting the final rule, "the Board's interpretation of information, applicable law, or regulation [was] in error or contrary to existing law." 36 CFR § 242.20(d); 50 CFR § 100.20(d).

The Ninilchik customary and traditional use determination for the Kasilof River drainage does not further ANILCA's purpose of providing an opportunity for rural residents engaged in a subsistence way of life to continue to do so, does not balance the competing purposes of ANILCA, is inconsistent with 36 CFR § 242.16 and 50 CFR § 100.16, will create a preference for uses that are not within the definition of "subsistence uses" in Section 803 of ANILCA, and will cause unnecessary restriction of nonsubsistence use in violation of section 815 of ANILCA. This determination was adopted based on data which had not been fully analyzed and was made without a reasonable examination of the eight regulatory factors for making customary and traditional use determinations. Further, the Board unreasonably declined to defer consideration of the proposal pending compliance with directions from the Secretary requiring the Board to develop written procedures or policies for customary and traditional use determinations. Because the adopted regulation designates fishing in an area as a customary and traditional use when such a designation was not supported on the record, it is arbitrary and capricious. As required by 36 CFR § 242.20(d)(4) and 50 CFR § 100.20(d)(4), a detailed statement follows.

II. Regulations Challenged.

At its meeting in January 2006, the Board considered Proposal WP06-09, amending the sections of 36 CFR § 242.24 and 50 CFR § 100.24 dealing with Cook Inlet



U.S. Fish and Wildlife Service
Bureau of Land Management
National Park Service
Bureau of Indian Affairs

Federal Subsistence Board Meeting Announcement



Forest Service

For Immediate Release:
April 16, 2007

Contact: Maureen Clark
(800) 478-1456 or (907) 786-3953
maureen_clark@fws.gov

Upcoming Meetings of the Federal Subsistence Board

The Federal Subsistence Board will meet April 30-May 2 at the Sheraton Anchorage Hotel, 401 E. 6th Ave., Anchorage to consider changes to Federal subsistence hunting and trapping regulations. Also on the agenda at this meeting will be the State of Alaska's request for reconsideration of the Board's November 2006 decision recognizing the customary and traditional use of fish in the Kenai River area by residents of Ninilchik.

The Board will also meet May 8-10 at the Coast International Inn, 3450 Aviation Drive, Anchorage, to consider changes to Federal subsistence fishing regulations on the Kenai Peninsula. In addition the Board will take action regarding the proper balance of subsistence, sport, and commercial representatives on the subsistence regional advisory councils.

Additional information on the Federal Subsistence Management Program can be found on the web at <http://alaska.fws.gov/asm/home.html>.

- FSB -

April 7, 2007

Rep. Mike Hawker
State Capitol, Room 502
Juneau, AK 99801

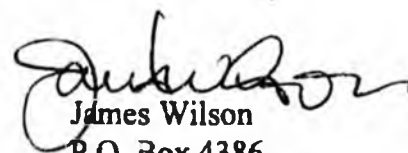
Dear Representative Hawker,

I am writing in support of Representative Kurt Olson's House Joint Resolution 4. It is inconceivable that the Federal Subsistence Board would designate Ninilchik a rural community with subsistence fishing rights on the Kenai River. I urge you to vote for this bill as many of us here on the Kenai Peninsula work to reverse the Board's decision.

I have attached a copy of my March 19 letter to Denby Lloyd, Commissioner, ADF&G, which more fully explains my attitude toward this issue.

Please support HJR 4 and thank you for your other good works in Juneau.

Sincerely,



James Wilson
P.O. Box 4386
Soldotna, AK 99669

March 19, 2007

Denby S. Lloyd
Commissioner
Alaska Department of Fish & Game
P.O. Box 115526
Juneau, AK 99811

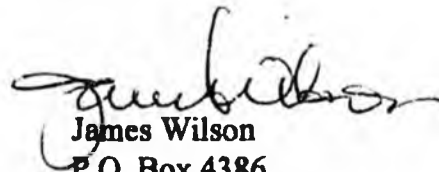
Dear Commissioner Lloyd,

I am writing to express my opposition to the Federal Subsistence Board's designation of Ninilchik as a rural community with subsistence fishing rights on the Kenai River.

This community rests squarely on the Sterling Highway, with easy access to major shopping centers in Homer, Soldotna and Kenai. Further, it has access to a modern airport in Kenai, capable of accommodating jet traffic, and to secondary airports at Homer and Soldotna. The Ninilchik community is also served by two hospitals, Central Peninsula Hospital in Soldotna and South Peninsula Hospital in Homer, with Central Peninsula Hospital currently undergoing a major expansion of its facilities and services. In fact, Ninilchik is often referred to as "Alaska's third largest city" as tourists, sportfishermen, clam diggers and outdoor enthusiasts gather there each year over the Memorial Day week-end. Why this community would be designated "rural" with subsistence fishing rights on two sections of the Kenai River is inexplicable, particularly since these sections are as much as 80 miles distant and have never been traditionally fished by residents of Ninilchik.

Accordingly, I urge the Department of Fish & Game to file suit in U. S. District Court to overturn the Federal Subsistence Board's designation of Ninilchik as a "rural" community.

Sincerely,



James Wilson
P.O. Box 4386
Soldotna, AK 99669

cc: Sarah Palin, Governor
Michael Fleagle, Chair, FSB