

RFR 07-02



Alaska Outdoor Council

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July 4, 2007

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**Mike Fleagle, Chair
Federal Subsistence Board**

Attention: Pete Probasco

FAXED FROM: (907) 376-7197

**Rod Arno, Executive Director
Alaska Outdoor Council**



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Mr. Mike Fleagle, Chair
 Federal Subsistence Board
 Office of Subsistence Management
 U.S. Fish and Wildlife Service
 Attention: Pete Probasco
 3601 C Street, Suite 1030
 Anchorage, Alaska 99503
 E-mail; subsistence@fws.gov.

RE: Final Rule 36 CFR Part 242; 50 CFR Part 100, Federal Register/ Vol.72, No 87. Subsistence Management Regulations for Public Lands in Alaska, Subpart C; Nonrural Determinations.

Dear Mr. Fleagle,

Significant factual errors and procedural inconsistencies occurred in the Federal Subsistence Board (FSB) 2006 decennial review of rural determinations (proposed rule 71 FR 46416) and in your final rule making on Nonrural Determinations (36 CFR Part 242.15; 50 CFR Part 100.15). These errors of fact and of process compromise the legitimacy of that regulation.

The FSB's consistent position of refusing to work with the State of Alaska or with organizations representing non-rural Alaskans has contributed to this flawed regulatory decision.

The Alaska Outdoor Council (AOC) requests reconsideration of the final rule 36 CFR Part 242; 50 CFR Part 100, Federal Register/ Vol.72, No 87. Subsistence Management Regulations for Public Lands in Alaska, Subpart C; Nonrural Determinations. Posted in the Federal Register on May 7, 2007.

Population size is a fundamental distinguishing characteristic between rural and nonrural communities. Under the current programmatic guidance in Federal subsistence regulations a community with a population of more than 7,000 shall be presumed nonrural, unless such a community or area possesses significant characteristics of a rural nature. The U.S. 2000 census lists Sitka's pop. at 8,835, well above the cutoff criteria.

AOC request for Reconsideration of Nonrural Determinations.

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Nowhere in regulation does it say "if the population increase in the last decade is only 3% it is not necessary to consider the significant characteristics found in 36 CFR 242.15 or 50 CFR 100.15.(a)(5)". I attended the December 6-7, 2005 FSB meeting and heard individual residents of Sitka and the Southeast Regional Advisory Council (RAC) give testimony recommending that Sitka be removed from the list of communities for further analysis. The FSB's vote to eliminate further review of Sitka's rural determination was an inconsistent interpretation and application of the guidelines in federal regulations.

Sitka's rural determination should be reconsidered.

The FSB's action to change Adak's status from nonrural to rural is another example of inconsistent interpretation and application of the guidelines in federal regulations for determining rural or nonrural status. Adak's population decline of 94%, because of the closure of the military base, which had no documented characteristics of a rural nature, does not cause the remaining 6% of the population to be federally qualified subsistence users.

An adequate analysis of characteristics under federal regulation 36 CFR 242.15(a)(5)(i) or 50 CFR 100.15(a)(5)(i) *Use of fish and wildlife* could not have been properly made by the FSB under the circumstances. Adak's population was military personal and support staff living in a nonrural area; the area remains nonrural, and the remaining population is nonrural residents.

Adak's nonrural status should be reinstated.

The checkerboard rural/nonrural federal determinations on the Kenai Peninsula are by far the most glaring example of the failure of the FSB to consistently and adequately apply 36 CFR 242.15 or 50 CFR 100.15 to federal public lands in Alaska.

Under the applicable federal regulations there are no substantive differences among the communities and areas that are road connected on the Kenai Peninsula that would allow the FSB to legitimately designate some as rural and some as nonrural.

The FSB can not legitimately give residents living between milepost 125 and 150 on the Sterling Highway a subsistence priority simply because a particular special interest group keeps demanding it. Bear in mind that Title VIII of ANILCA and the Federal subsistence management system established to implement it are supposed to be racially neutral. The Ninth Circuit Court in *Hoonah Indian Association v. Morrison*, 170 F.3d 1223, 1228 (9th Cir. 1999) has concluded that Title VIII of ANILCA is not Indian legislation for the purpose of statutory construction.

AOC requests the FSB reverse the decision to retain rural status of the communities and areas of Ninilchik, Happy Valley, Cooper Landing and Hope.

AOC request for Reconsideration of Nonrural Determinations.

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The Alaska Outdoor Council (AOC) is a statewide organization representing 48 Member Clubs and 2,500 individual members totaling 10,000+ Alaskans. Our members hunt, fish, and trap on federal public lands throughout the state. AOC has advocated for conservation of natural resources and equality in access and use of those natural resources since before statehood.

Thank you for your consideration of AOC's comments,



Rod Arno
Executive Director
Alaska Outdoor Council
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Cc: The Honorable Sarah Palin, Governor of Alaska
The Honorable Ted Stevens, U.S. Senator
The Honorable Lisa Murkowski, U.S. Senator
The Honorable Don Young, U.S. Congressman
Talis Colberg, Attorney General, State of Alaska
Denby Lloyd, Commissioner Alaska Department of Fish & Game