

RFR 07-03



Mr. Michael R. Fleagle, Chairman
Federal Subsistence Board
Office of Subsistence Management
3601 C Street, Suite 1030
Anchorage, AK 99503
subsistence@fws.gov

June 30, 2007

Dear Chairman Fleagle,

Please find enclosed a formal request for reconsideration concerning the Rural and Non-Rural Determinations for the Kenai Peninsula.

In accordance with CFR 100.20 the Kenai River Sportfishing Association is requesting the Federal Subsistence Board reconsider their recent actions regarding 50 CFR 100.23 and 36 CFR Part 242, published in the Federal Register May 7, 2007 *Final Rule Subsistence Management Regulations for Public Lands in Alaska, Subpart C*.

We believe there were significant procedural and informational issues that were overlooked. In our request we detail the issues into three primary areas of concern:

- Inconsistent Use of Federal Regulations and Selective Use of Criteria
- Inappropriate Use of Executive Session, and
- Data Concerns

We hope the Federal Board will choose to reconsider this past action in an effort to make the best possible decisions regarding Federal Subsistence Management on the Kenai Peninsula.

Sincerely,

Ricky Gease
Executive Director



Dedicated to preserving the greatest sportfishing river in the world, the Kenai.

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**Request for Reconsideration of the Rural and Non-Rural Determinations for the
Kenai Peninsula
Submitted by
Kenai River Sportfishing Association**

In accordance with CFR 100.20 the Kenai River Sportfishing Association is requesting the Federal Subsistence Board reconsider their recent actions regarding 50 CFR 100.23 and 36 CFR Part 242, published in the Federal Register May 7, 2007 *Final Rule Subsistence Management Regulations for Public Lands in Alaska, Subpart C*.

1) Name and Mailing Address:

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2) Requested Action:

Reconsider and reverse the actions taken by the Federal Subsistence Board designating the communities of Hope, Cooper Landing, and Ninilchik as rural as described in Federal Register/Vol. 72, No. 87/ Monday May 7, 2007 Rules and Regulations. 50 CFR 100.23 and 36 CFR Part 242, published in the Federal Register May 7, 2007 *Final Rule Subsistence Management Regulations for Public Lands in Alaska, Subpart C*.

3) Statement of Adverse Impact

Application of the Federal subsistence priority within the Kenai Peninsula is a relatively new phenomenon that will have potentially huge economic and social impacts to the residents of the Peninsula as well as those visiting the Kenai Peninsula. Kenai Peninsula fisheries sustain the vast majority of recreational fishing and Personal Use fishing opportunity in Alaska as well as long term historic commercial fisheries. These uses are cornerstone to the regions economic base.

We are concerned that the application of the Federal Subsistence Priority, if applied inappropriately and without complete adherence to Federal regulations and policy, will have disastrous effects on the fishery resources of the Peninsula, the economy of the region, and the cultural fabric of the communities within the Kenai Peninsula. We are therefore vigilant that as the application of this program takes place that Federal Subsistence Board members adhere to applicable legal requirements, policy, procedure and legislative intent.

Carving up the Peninsula into communities which have been designated rural and non-rural and the granting of a subsistence priority to those communities designated rural carries with it the intent that in times of resource shortage subsistence use will be granted a priority over other uses. If applied hastily, and outside the scope of the existing law, the Federal subsistence priority will be misplaced having unintended consequences that are catastrophic. Presently, the FSB has no formal closure policy and previous actions by the FSB in closing other fisheries within the State have not been consistent. We believe the Board must be judicious in its determinations of Rural and Non Rural as each time the FSB grants C&T for a community that action carries with it the potential to restrict other uses. In the case of the Kenai River, the largest sport fishery for salmon in the world, those consequences can have catastrophic political, social, and economic consequences.

4) Detailed Statement of the Facts

According to 50 CFR 100.15 Rural determination process, the Federal Board shall determine if an area or community in Alaska is rural. A rural determination may be made only for areas with a population of 7,000 or less. An areas characteristic shall be considered in evaluating a community's rural or non-rural status. There are some loosely described characteristics that may be considered which include the use of fish and wildlife, development and diversity of the economy, community infrastructure, transportation and other uses. Additionally, according to subparagraph (6) states that "Communities or areas which are economically, socially, and communally integrated shall be considered as an aggregate".

We believe there were significant deviations from prescribed Administrative Process that make the Boards actions in this matter void and worthy of reconsideration.

A. Inconsistent Use of Federal Regulations and Selective Use of Criteria

We have reviewed the 2006 analysis of Rural Non-rural issues presented by OSM and believe the federal staff has arbitrarily limited the scope of the evaluations to favor a rural decision for selected the communities on the Kenai Peninsula. The analysis clearly omitted application some of the criteria and the exclusion, intentional or not, could have the effect of dramatically altering the Boards final action.

Additionally, we believe the Board has not used a consistent process for each of the communities when making decisions regarding rural stratus. In some cases the Board has used empirical information as the basis of its decision and in other cases the board has substituted public testimony as the basis for the decision. The lack of consistent approach gives the appearance of cherry picking information to help support a predisposed decision.

These oversights can be corrected by reconsidering the previous action, aggregating communities, and deliberating the issue while making full use of all five applicable criteria.

B. Inappropriate Use of Executive Session

Several informal meetings were held within the state and attended by OSM staff where discussions concerning the rural non-rural process took place. Products from these meetings apparently resulted in the formation of criteria and process regarding how the Federal Board would administratively navigate through its decisions concerning rural non-rural determinations for the Kenai Peninsula. Most notably was a session occurring on June 22, 2006 where the Board met to develop a list of communities and areas it believes to be non-rural.

There was insufficient public notice of these meeting as no notice was published in the Federal Register. This in itself is a significant breach of process. The public was excluded from hearing the basis for the Board's decisions on which communities to continue to research and which to omit.

This is a complex process in and of itself. The complexity limits meaningful public involvement. Public involvement is further thwarted when the Federal Board conducts business in inadequately noticed meetings such as this.

This procedural error will be corrected by reconsidering the actions related to rural non-rural and conducting the deliberations in an open public forum with full public notice.

C. Data Concerns

We are extremely concerned that the Board action was apparently based on information that lacked relevant and updated information. The June 23, 2006 analysis provided by OSM staff fails to incorporate comparative changes within communities occurring between 1990 and 2000. The Federal analysis minimizes the changes that have occurred in the past decade and makes little specific reference to specifically what has changed within communities and what has not so that a thoughtful and informed decision can be arrived at by the Board. This oversight is clearly counter to the Board's intent and regulatory guidelines.

There is a recurrent problem with the way the Federal staff are addressing the issue of aggregation of similar communities. The Board action gives the appearance of selectively grouping communities in a manner that arrives at predetermined outcome. Specific criteria once used were selectively omitted from the analysis. For example community residents behavior relative to securing goods and services (shopping) was once considered relevant, has now been dismissed. We believe that the location of food sources, supplies, and services, are elemental when describing the relationship of one community to another.

One major difficulty in rural determinations for Kenai Peninsula communities is how to address subgroups within communities. It is very apparent that the staff analysis concerning the issue of rural determination has placed a very large weight to those factors favoring a rural determination for those sub groups at the expense of looking at the larger picture. The result has been that a community found rural is adjacent to another found non-rural and the difference between these communities is unclear and not documented within the record of decision.

The "analysis" provided by federal staff is full of inconsistencies, errors and omissions. It is intellectually difficult for any objective person to clearly see the distinction between communities deemed to be rural and those deemed to be non-rural based on the information provided by Federal staff, and a review of the Board's record of decision.

The flaw in the analytical procedure has been pointed out by the State of Alaska. The state has recommended the analysis be revised to address deficiencies and failures to consistently consider and present changes that have occurred in the previous decade and address the specific omission of information related to fish and wildlife uses between communities.

The informational errors may be addressed by reconsidering the previous action and requesting Federal staff provide a complete and updated analysis with specific reference to how and on what basis communities are to be considered aggregated.

5) Requested Action

Reconsider and reverse the actions taken by the Federal Subsistence Board designating the communities of Hope, Cooper Landing and Ninilchik as rural as described in Federal Register/Vol. 72, No. 87/ Monday May 7, 2007 Rules and Regulations. 50 CFR 100.23 and 36 CFR Part 242, published in the Federal Register May 7, 2007 *Final Rule Subsistence Management Regulations for Public Lands in Alaska, Subpart C.*

END

