

Rural Determinations Decennial Review

Summary of
Council Recommendations and Public Comments
on the August 2006 Proposed Rule and
Considerations in Response

November 27, 2006

Office of Subsistence Management
3601 C Street, Suite 1030
Anchorage, AK 99503

CONTENTS

Introduction 2

Summary of Proposed Changes 3

Summary of Council Recommendations..... 4

Summary of Board Public Hearings..... 5

 Kodiak 5

 Saxman 7

 Ketchikan 8

 Sitka 10

Summary of Written Public Comments..... 11

 Sitka 12

 Kodiak 13

 Ketchikan 14

 Saxman 14

Considerations in Response to Recommendations and Comments 15

 Grouping of Communities and Areas..... 15

 Population 16

 Population Density..... 16

 Population Thresholds 17

 Community Characteristics..... 18

 Consistency of Approach for Sitka and the Kodiak Area..... 18

 Other Considerations..... 19

Literature Cited..... 19

Appendix A Proposed Rule on Nonrural Determinations as Published August 14, 2006, and Associated Maps..... 21

Appendix B Key Points in Response to State of Alaska Comments on the Federal Review of Rural Determinations 36

INTRODUCTION

The Federal Subsistence Board (Board) sought recommendations from the Federal Subsistence Regional Advisory Councils (Councils) and public comments from August through October 27, 2006 on a proposed rule (**Appendix A**) that would change the rural or nonrural status of several Alaska communities and areas. **Appendix A** also provides maps associated with the proposed rule.

The current status of rural determinations is that all communities and areas in Alaska are considered rural for the purposes of the Federal Subsistence Management Program, except for the following:

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

No changes in rural/nonrural status of communities or areas were proposed in the Bristol Bay, Yukon-Kuskokwim Delta, Western Interior Alaska, Seward Peninsula, Northwest Arctic, or Eastern Interior Alaska Council regions.

The Board held public hearings in Kodiak on September 20–21, Saxman on September 25, Ketchikan on September 26, and Sitka on October 10, in response to public requests. The Board is scheduled to decide upon the final rule at a public meeting in Anchorage on December 12–13, 2006. Public testimony will be taken at that meeting, and all Council Chairs have been invited.

The purpose of this report is to summarize main themes from recommendations and comments on the proposed rule received through October 27, 2006, and to present some considerations in response. Full verbatim content of Council recommendations and written public comments, and full transcripts of Council meetings and Board public hearings, are part of the administrative record. This is the fifth in a series of reports prepared by the Office of Subsistence Management in support of the decennial review of rural determinations (OSM 2005*a*, 2005*b*, 2005*c*, and 2006).

The Alaska National Interest Lands Conservation Act (ANILCA) requires that rural Alaskans be given priority for subsistence uses of fish and wildlife on Federal public lands. Only residents of rural communities and areas are eligible for this subsistence priority. The Board initially determined which Alaska communities were rural at the outset of the Federal Subsistence Management Program in 1990. Federal subsistence regulations require that rural/nonrural status be reviewed every 10 years, beginning with the availability of the 2000 census data. An initial staff review completed in July 2005 (OSM 2005*b*) recommended that the rural/nonrural status of most Alaska communities remain unchanged for the proposed rule.

The regulations require that communities or areas that are economically, socially, and communally integrated be grouped for evaluation purposes. When considering whether communities or areas should be grouped, the Board directed staff to report on the following three indicators: 1) proximity/road connectedness; 2) shared high school attendance area; and 3) commuting of 30% or more of the workers between places of interest.

The regulations include guidelines for rural and nonrural status relative to population size:

- A community with a population below 2,500 is considered rural, unless it possesses significant characteristics of a nonrural nature or is considered to be socially and economically part of a nonrural area.
- A community with a population of more than 7,000 is considered nonrural unless it possesses significant characteristics of a rural nature.
- A community with a population above 2,500, but not more than 7,000, is to be evaluated to determine rural/nonrural status.

When evaluating rural/nonrural status of communities or groupings, the method was to:

- First, categorize the community or grouping by population size relative to the population thresholds.
- Then, evaluate community characteristics as warranted. These may include, but are not limited to:
 - Diversity and development of the local economy
 - Use of fish and wildlife
 - Community infrastructure
 - Transportation
 - Educational institutions.

SUMMARY OF PROPOSED CHANGES

The Board proposed changes in rural/nonrural status of communities or areas in the North Slope, Southcentral Alaska, Kodiak/Aleutians, and Southeast Alaska Federal subsistence regions. It should be noted that Federal subsistence regulations require a five-year waiting period before the status change of any community or area from rural to nonrural takes effect. The proposed rule (**Appendix A**) provides a description of, and rationale for, the proposed changes. The analysis used by the Board in developing the proposed rule, and which is a source of further technical detail, was prepared by the Office of Subsistence Management (OSM 2006), as assigned by the Board at the December 2005 Board public meeting. Briefly, the proposed changes are as follows:

- 1) **Adak** is proposed for change in status from nonrural to rural. Adak, a remote community in the Aleutian Islands, has undergone a substantial decrease in population (from more than 4,600 people in 1990 to less than 200 in 2005) which warrants a change in status.
- 2) **Prudhoe Bay** is proposed for change in status from rural to nonrural. Prudhoe Bay is an industrial enclave built for the sole purpose of extracting oil, currently with no permanent residents and none of the characteristics typical of a rural community.

- 3) **Point MacKenzie** is proposed to be grouped with the nonrural Wasilla/Palmer Area, and to thereby change in status from rural to nonrural. Available information indicates that Point MacKenzie is economically, socially and communally integrated with the Wasilla/Palmer Area.
- 4) **Fritz Creek East** (not including Voznesenka) and the **North Fork Road area** are proposed to be grouped with the nonrural Homer Area, and to thereby change in status from rural to nonrural. Available information indicates that these areas are economically, socially and communally integrated with the Homer Area.
- 5) **Sterling** is proposed to be fully included in the nonrural Kenai Area. Sterling has been part of the nonrural Kenai Area since 1990. However, for the 2000 census the Sterling census designated place was expanded, such that a significant portion now extends beyond the current boundary of the Kenai Area. This expanded portion would change in status from rural to nonrural with inclusion as proposed.
- 6) The **Kodiak Area**, including the City of Kodiak, the Mill Bay area, the Coast Guard Station, Women's Bay and Bells Flats, is proposed for change in status from rural to nonrural. Available information indicates that these places are economically, socially and communally integrated to an extent that warrants grouping. The population of this area is approximately 12,000 people, and available information on community characteristics indicates nonrural status. (Places excluded from the grouping, which would thereby remain rural in status, are Chiniak, Pasagshak, Anton Larsen, Kalsin Bay and Middle Bay, and villages and communities on the Kodiak Archipelago not connected by road to the City of Kodiak.)
- 7) The **Ketchikan Area** is proposed to be expanded to include all areas on the road system connected to the City of Ketchikan (except Saxman, population 405 in 2005), as well as Pennock Island and an expanded portion of Gravina Island. No change is proposed in the nonrural status of the Ketchikan Area. Saxman would remain separate and rural. The population of the Ketchikan Area so identified, excluding Saxman, was an estimated 12,720 people in 2005, and available information on community characteristics indicates nonrural status.

SUMMARY OF COUNCIL RECOMMENDATIONS

Five of the ten Councils had comments and recommendations to the Board on the proposed rule on the decennial review of rural/nonrural determinations. This summary is based upon transcripts of the September–October 2006 Council meetings, letters from the Councils, and from written Council recommendations.

The **Southeast Alaska Subsistence Regional Advisory Council** concurs with the Board's proposed rule to maintain the rural status of Sitka and Saxman. The Council provided its rationale for Sitka and Saxman in its October 28, 2005 letter to the Board. The Council does not agree with the Board's proposed rule for Ketchikan. The Council's rationale for its recommendation to classify Ketchikan as rural is found in its October 28, 2005 letter to the Board. Public testimony at the Board hearing in Ketchikan strongly supported rural classification. A harvest and use survey was conducted in Ketchikan in early 2006 by Ketchikan Indian Community in cooperation with the Bureau of Indian Affairs. Data from this survey show a high reliance on fish and wildlife. The Council's recommendations are presented in its October 27, 2006 letter to the Board.

The Council is also concerned that the presumptive nonrural population threshold of 7,000 is in error, and recommends a change, if a threshold must be used, to 11,316. Rationale is that the 7,000 threshold in regulation is based on the population for Ketchikan City back in 1980, but since communities are grouped before comparing to the threshold level, the Ketchikan Area population of 11,316 in 1980 should have

been used. The Council submitted a petition to the Secretary for regulatory change on this issue, since it is not under Board authority.

The **Southcentral Alaska Subsistence Regional Advisory Council** unanimously supported, with one abstention, the proposed rule for all changes in the Southcentral region. The Council deferred to the Councils in the home regions on other proposed changes. The Council commented that guidelines and criterion need to be reviewed further to clearly address communities surrounding military bases and hub communities on the road system.

The **Kodiak/Aleutians Subsistence Regional Advisory Council** maintained its recommendations from previous meetings and letters to the Board that Kodiak and its road system should remain classified as rural, and that classification of Adak should be changed from nonrural to rural.

The **Eastern Interior Alaska Subsistence Regional Advisory Council** unanimously passed a motion, at their meeting in Delta Junction, to recommend the removal of Fort Greely from the Board's grouping of the four census designated places (CDP) of Delta Junction, Big Delta, Deltana, and Fort Greely, and remove any incorrect references about educational institutions present in the community from the Federal Register (Vol. 71, No. 156, August 14, 2006, page 46419).

The **North Slope Subsistence Regional Advisory Council** passed a motion to change the designation of Prudhoe Bay from rural to nonrural. The staff analysis supports the community's knowledge of the Prudhoe Bay complex as an industrial area. There are no families living there with children. There are no schools or churches. There are no public utility services provided except for the industrial complexes. None of the characteristics of a community exist. There is no subsistence harvest. It is not an area that is used by people for subsistence activities. Only industrial activities occur in the Prudhoe Bay area.

Five of the ten Councils had no recommendations for the Board at this time on the proposed rule, those being the **Bristol Bay, Yukon-Kuskokwim Delta, Western Interior Alaska, Seward Peninsula, and Northwest Arctic Councils**.

SUMMARY OF BOARD PUBLIC HEARINGS

Kodiak

The Board heard 85 testimonies at the public hearing in Kodiak on September 20–21, 2006. Testimony was entirely in support of continued rural status of Kodiak. A wide spectrum of the Kodiak community testified including commercial fishers, Alaska Natives, long term non-Native residents, Filipino community leaders, elected officials, city, borough, and tribal government representatives, healthcare, legal, education, and private sector professionals, religious leaders, and current and retired Coast Guard personnel.

Several primary themes dominated the information that was provided to the Board. The basic theme of the testimony was that Kodiak is rural and has become more rural since 1990, when the original status determination was made. They questioned what has changed since 1990 that would now make them nonrural. Many people testified that population should not determine whether or not Kodiak is rural. Throughout the hearing, many emphasized that Kodiak's socioeconomic dependence on subsistence and commercial fisheries is a rural characteristic. People overwhelmingly described Kodiak as being in a state of economic downturn. Commercial fishing and subsistence are interdependent. The economic downturn has led to an increase in dependence on subsistence harvest.

In addition to the downturn of commercial fishing, fuel prices have increased, which has led to increases in shipping costs, most notable in food prices. Many people said the cost of living in Kodiak, particularly for food, housing, and electricity, is among the highest in the state.

Many people commented that Kodiak is isolated. They explained that weather and distance make travel difficult. The ferry takes at least 12 hours and flights are often cancelled or turned back due to bad weather. Many people spoke of days without mail and empty grocery store shelves. Increasing fuel prices have raised travel costs, adding to the isolation that, in their perspective, makes Kodiak rural.

A considerable number of people testified against the proposed grouping of places into a nonrural Kodiak Area. Separate status classifications would be divisive and confusing for the community. Several people commented that the Coast Guard Base is an enclave that has its own police and fire department, elementary school, medical facility, child care center, and water and sewer systems not connected to Kodiak City, and it should not be grouped with Kodiak City. It was said that food and other expenses for Coast Guard personnel are subsidized, and they receive a cost of living allowance which offsets the high cost of living in the area. A member of the Coast Guard spoke of the transient nature of Coast Guard personnel duty stationing.

Kodiak has always been a fishery-dependent community. A former State of Alaska biologist reported that in 2005 less than half of the Kodiak commercial salmon permit holders fished because it was not economically feasible. Almost 1,000 jobs have been lost in the harvesting sector, and additional jobs have been lost in tendering and processing. Several commercial fishers noted that because they do not pay into the unemployment system, these job losses are not reflected in unemployment statistics for Kodiak. Commercial fishers repeatedly testified that recent Federal commercial fishery regulations such as individual fishing quotas for halibut and crab rationalization had disqualified them from these fisheries and left captains, crew and processors unemployed. Many of these families said it has increased their dependence on nearby subsistence fisheries for their households and other households they provide with fish.

Numerous people testified about the potential domino effect of a nonrural determination. They expressed concern that the State of Alaska might determine Kodiak a nonsubsistence area, or that Federal subsistence halibut regulations might change, and this might lead to community division.

The Kodiak Island Borough School District, the City of Kodiak and several small business owners testified that they had to let employees go because of the overall economic downturn of the Kodiak economy.

Several people referred to Kodiak as the hub of the Island economy including the outlying villages. They stated that the small population increase in Kodiak is proportional to the out-migration from the villages, which is related to the overall economic downturn of the Island economy. They said there is frequent movement between the villages and Kodiak for economic, education, and medical reasons. Testifiers expressed concern about proposed regulatory wedges that would divide the Island-wide cash-subsistence economy of Kodiak. They questioned how a nonrural determination might affect people who make their living in both locations.

Much of the testimony described the cultural, economic, and social importance of subsistence use of fish and wildlife resources, including sharing. Many testified that their way of life, subsistence, is essential to their physical, spiritual, and cultural health. Numerous Alutiiq (Alaska Native) residents of Kodiak described the critical importance of their subsistence lifestyle to their cultural identity, family cohesion, and sense of community in Kodiak and across the Island. Several cited ADF&G Community

Profile Database information from the early 1990s which shows that all Kodiak residents use subsistence resources and 84% share them. Several people said the average per capita subsistence harvest of 155 pounds is more than nonrural areas. A wide range of subsistence resources being used were described; over one hundred plant and animal species were listed. The importance of the subsistence salmon harvest was emphasized. The areas of Federal jurisdiction close to Kodiak, the mouth of the Buskin River, Women's Bay, and the area around Afognak Island, are where the bulk of Kodiak's subsistence salmon is harvested. There was concern that a change to nonrural could have a major negative impact if these areas were no longer accessible to Kodiak subsistence harvesters. Sport fishing regulations would not provide for harvesting the bulk of what is needed in only a few trips, which is more efficient in terms of fuel and time. Several people, including biologists, commented that continued rural status would not have a negative effect on the sustainability of fish and wildlife resources in Kodiak.

The city manager of Kodiak testified that services such as law enforcement are provided only within the city limits. The Kodiak Police Department has an informal agreement to assist the State Troopers outside city limits. She noted there are four separate fire departments on the road system, with formal written agreements between them because they are separate jurisdictions. Also, the City of Kodiak Fire Department is designated as a Level A hazmat team because the State determined Kodiak is a remote location and needs its own response team for incidents that cannot wait for off-Island teams to arrive. The high school is crowded, but there are not enough students on the road system and in the outlying areas to justify building a new school.

Saxman

The Board heard 28 testimonies at the public hearing in Saxman on September 25, 2006. Testimony was entirely in support of continued rural status of Saxman. Saxman was described as a rural community, independent from Ketchikan, regardless of the road system connecting what was said to be two distinct communities. Most of the themes summarized here were mentioned by many of the individuals providing testimony, as well as in letters that were submitted on behalf of those who were not able to testify in person. Testifiers emphasized the importance of subsistence foods and traditions to their way of life, and the separateness of Saxman from Ketchikan. Three residents of the Waterfall subdivision, north of the City of Ketchikan, requested that their area also remain rural in status.

People reported that no significant demographic changes have taken place in Saxman to warrant a change of Federal status from rural to nonrural since the last consideration period. The Tongass people of Tongass Island, and Cape Fox Village people, moved and combined to create the village Saxman. Many relocated to the area to get an education. There was no road in the beginning; transportation was via trail or canoe. Children of families who grew up in Saxman would love to remain in the village permanently, but there is limited space and resources with no room to build homes. Many have no choice but to move to Ketchikan, but still wish to maintain their ties to the land and subsistence harvesting practices. They feel Saxman is their true home that contains their family history—even if they are forced to relocate to Ketchikan. The community anticipates no changes in the future that would designate them as being a nonrural community. Characteristics of a small, close-knit community drew many residents to live in Saxman. The relationships among the people are permanent and personalized. Saxman is an interconnected community with a rich history and will remain that way.

Saxman is an independent community with its own tribal government (as described by the IRA act of 1934) and staffed village corporation, mayor, places of worship, and fraternal organizations. Interactions with the community of Ketchikan do not take away from the village way of life. Necessities are enhanced with the access to Ketchikan, but the village way of life is passed on and harvesting subsistence and

traditional resources is a main focus of the community. Saxman residents see the differences between the communities as stark: If they were integrated, why is the socioeconomic status of the communities so different? The current criteria do not reflect important issues relevant today. The process stymies tribal rights when residents are not consulted. Saxman is separate and is a rural community dependent on customary and traditional gathering of subsistence resources. They want to remain eligible users of subsistence resources. They meet Section 801 of Title VIII of ANILCA. Culturally, residents also see Saxman and Ketchikan as distinct and different clans and groups.

The unemployment rate in Ketchikan was said to be higher than is stated in the analysis. The pulp mill shutting down resulted in the loss of many jobs. Many Saxman residents live paycheck to paycheck. Families want to pass down homes to their children and remain in Saxman. In order for this to happen, individuals must be able to supplement living the lifestyle they have always lived. It is important to put up the necessary fish and meat for the winter; they want to remain rural. Supplemental subsistence foods are needed to offset the cost of food and fuel, and for their heritage. Hardship will come for the people of Saxman if they do not remain rural and if the Federal subsistence rights are taken away.

Subsistence foods are essential for a healthy lifestyle—this is what they eat and what they stock in their home. The figures in the staff analysis are not high enough. From fish to berries to beach greens and clams, families put up and consume large amounts of traditionally harvested foods. Subsistence hunting and fishing has been a part of their lives since the beginning. They should be able to continue this heritage and way of life. Food, clothing, shelter, and handicrafts are culturally and economically important with regard to traditional harvest. Stories, ceremonies, and dances passed on are connected to the gathering of subsistence foods. People testified about the important ties their traditional food provides to the way their ancestors lived in the past. To disrupt current access to natural resources provided by rural status will negatively affect quality of life in Saxman. Processed foods are not as healthy as naturally gathered foods.

Even when you live in Ketchikan, you are brought back to the community to participate in cultural events, government, and organizations such as ANB. Young people who reside in Saxman testified about the value subsistence has for the family. Cultural ceremonies such as potlatches provide the opportunity for these foods to be shared and the connection between tribal families to be solidified. Sharing also takes place within the community on individual levels, especially with elder residents of the community.

Three residents of the Waterfall subdivision testified, requesting that their area remain rural in status. Comparison was made to Saxman, which currently has rural status. It was noted that it is 17 miles from Waterfall to the center of Ketchikan City, there is no government aid for things such as road plowing, the population of the area is on the order of 100 people, and it is 6 miles to the nearest small grocery store. The lifestyle is chosen and they want to keep that tradition. People live far out to enjoy the solitary surroundings. It is vital to have subsistence to provide for the families.

Ketchikan

The Board heard 33 testimonies at the public hearing in Ketchikan on September 26, 2006. Testimony was entirely in support of having Ketchikan's status changed from nonrural to rural. People emphasized that they do not want to take anything away from Saxman residents, they simply want to be rural as well.

Gathering subsistence foods is important not only for nutrition, but also to culture, which is passed on to young children and family members. Gathering of subsistence foods also contributes materials necessary for art. Regalia and other cultural products are instrumental in keeping the culture alive. The community is very diverse. People who originated from outlying villages came to Ketchikan for economic purposes. They still want to have access to the natural foods: fish, salmon, seaweed, and other foods necessary to

remain healthy. Many people testified that they do not buy beef and other meats—the best food in the world comes from the surrounding ocean and land. Parents want their children to be able to have the food they grew up with. Foods are provided to people who cannot go out for subsistence and to parties, potlatches, etc. Fixed-income relatives are provided for through subsistence foods. Knowledge to their children and grandchildren will be compromised if Ketchikan residents continue to be considered nonrural. The physical and mental well-being of the Native peoples in Ketchikan was said to be at stake with this decision.

The island community is very isolated, and Ketchikan residents testified that cost of living is expensive, making it difficult to survive without supplementing their incomes with subsistence foods. Also, there was testimony that most of the land in Ketchikan is not owned by Ketchikan residents. The pulp mill closing was a substantial impact to the community. The approximately 500 jobs lost, salary along with benefits, have not been replaced with anything. Declines in logging and in commercial fishing have followed. The cost of living has increased, while wages have not. These declines make Ketchikan more rural now than when the initial determinations were made. The tourism industry shuts down completely for the winter; the money goes back down south after the summer season. There are not many flights to and from Ketchikan; there are more to other rural areas. ANILCA provisions were to protect rural rights and opportunities, and the people of Ketchikan deserve to be recognized.

Peoples lives are put at risk when they have to take dangerous trips out to gather subsistence foods. Residents testified that in the past several years, they have noticed that they have to travel further to gather subsistence foods. Ketchikan residents did not feel that they should be excluded from subsistence harvest because of the road system—they do not harvest on the road system, as most harvest takes place on surrounding islands away from Ketchikan. High fuel costs and low amounts of fish have made it harder to get their subsistence fish.

There was testimony that the entire area should be treated the same, that Ketchikan and Saxman and the outlying areas along the road system should all be rural. The outlying areas were said to be as rural as Saxman, which currently has rural status. It was pointed out that the staff analysis notes that the road was extended beyond the current nonrural boundary, when actually the road beyond the current nonrural boundary was upgraded from gravel to a paved surface. There was also testimony that Ketchikan City and Ketchikan Borough need to be analyzed as separate and distinct. The rural/nonrural issue between Prince of Wales Island, Saxman, and Ketchikan was said to have divided friends, neighbors, and communities. This makes for an us and them situation. Ketchikan is a Native and a non-Native town—the community needs to be recognized as a people who enjoy and depend on the resources.

One resident in particular spoke to the process as a whole, claiming that Native peoples residing in nonrural areas are denied the necessary elements of the environment that are critical to health, well-being, and spirituality that are vital to their way of life. There is support for Saxman to remain rural, but what about Native peoples in nonrural areas here and elsewhere?

Some noted that Ketchikan is similar to Kodiak. Others said that Ketchikan is similar to subsistence communities such as Sitka, but that little analysis was made between the two communities. Residents testified that Ketchikan was misjudged when it was classified as nonrural. The subsistence use numbers for Ketchikan in past data are lower than for other rural communities, but Ketchikan residents have not had the advantage of rural status under which to gather subsistence foods. That they are still able to get the resources shows the commitment to utilizing the resources by whatever means possible. Harvest surveys show that the resources are used year-round. If Ketchikan were designated rural, funding could be available to study hooligan, which have had very poor returns in the recent years. Also, the recent

household survey of subsistence uses that was conducted in Ketchikan should be taken into account in making a rural determination for Ketchikan. Testifiers felt that there are not enough substantial differences between Ketchikan and rural communities to designate Ketchikan as nonrural.

Sitka

The Board heard 86 testimonies at the public hearing in Sitka on October 10, 2006. Testimony was entirely in support of continued rural status of Sitka. Testimony differed in the reasons people gave for this rural status. Some focused more on their personal experience, some on cultural identity or way of life. Others focused on Sitka's demographic characteristics, its subsistence orientation, or the determination process itself.

Testifiers represented a wide range of Sitka residents. Many persons in leadership positions testified including the mayor, the chairman of Shee Atika Corporation, the president of the Sitka Tribe of Alaska, the chair of the Fish and Game Advisory Committee, a State Senator, Alaska Native Brotherhood officers, the former chair of the Alaska Board of Game, and others. Tribal elders, commercial fishers, school teachers, doctors, and youth provided testimony. A number of people presented technical information concerning Sitka's community characteristics based on work they do for the City of Sitka or the Sitka Tribe of Alaska. One lawyer referred to work he had done concerning rural determinations in the early 1990s. In summary, most segments of the Sitka community were represented.

Testifiers repeatedly spoke of their high level of subsistence use, and reliance on fish and wildlife, as a way of life. Non-Natives emphasized their family decisions to live in Sitka—because of the ability to live a subsistence lifestyle. Natives emphasized cultural heritage. Persons with technical information pointed to Sitka's high dependence on fish and wildlife and documented harvest levels. The Native foods program of the tribe was described. Many people spoke of sharing food with others.

Testifiers pointed out that Sitka is an island community with poor ferry service and limited air service. Food is barged in. This is a very different situation from rural areas elsewhere in North America where small towns (the size of Sitka) are connected by road to larger areas where a full range of amenities are available (including major employment and consumer centers).

A number of testifiers stated that there has been no change in Sitka since 1990 (or 1980) in the character of the town that would make it a less rural place. The cash economy situation has worsened, particularly since the closure of the pulp mill in 1993. Average monthly wage was said to have declined from \$3,500 to \$2,600, and population has been static compared to growing urban areas. Tourism is a seasonal business.

A number of testifiers believed that the use of threshold population levels in making rural determinations is in error. One person repeated detailed testimony on this point that he originally made in the hearings held in 1990. The claim is that the 7,000 threshold in regulation is based on the population for Ketchikan City back in 1980, but since communities are grouped before comparing to the threshold level, the Ketchikan Area population of about 11,000 in 1980 should have been used.

A dietician and others referred to the nutritional value of wild foods, and noted that subsistence foods were much healthier than store purchased items.

City officials provided information showing that Sitka is a very expensive place to live. Economic characteristics of the community were outlined. Testifiers felt that these economic characteristics were not those of an urban area.

Testifiers pointed out that Sitka supplies herring eggs throughout Southeast Alaska. Other mention was made of food sent to students and others who may be temporarily away from the community.

Many testifiers spoke of their own lives and the importance of subsistence hunting and fishing to them and their families, that subsistence was a central family focus and a reason why they lived in Sitka.

Tlingit elders and other Tlingit testifiers emphasized the central place that subsistence harvest and use of fish and wildlife has in maintaining Tlingit culture. A number of testifiers spoke of different Tlingit cultural traditions—traditional house units, clan territories, pay off parties, honoring the dead, sharing, etc.

School enrollment was said to be decreasing; this was not seen as a characteristic of a community with a growing population.

SUMMARY OF WRITTEN PUBLIC COMMENTS

The Board received written comments from approximately 300 individuals, and from 31 organizations, agencies, and government representatives, as well as 11 resolutions from city, borough, and tribal governments and organizations. Almost all who commented requested a rural determination for their community. Virtually all of the written testimony from individuals came from Sitka, Kodiak, Ketchikan, and Saxman.

The State of Alaska, the Alaska Federation of Natives, and the Alaska Outdoor Council provided written testimony in regard to several of the areas under analysis and the Board process.

The State of Alaska did not provide comment on the rural or nonrural status of any community. Instead, the State delineated what it perceives as “significant factual errors and procedural inconsistencies in the Federal Subsistence Board’s decennial review of rural determinations.” Given the scope and detail of the State’s comments, and the State’s role in dual-management and in relationship to the Federal subsistence management program through the Interim Memorandum of Agreement, detailed response is provided in **Appendix B**.

The Alaska Outdoor Council (AOC) provided testimony on its view that the Board’s process is not consistent and is not based on objective criteria. Additionally, the AOC commented against the continued rural status of several of the road-connected communities, and of Kodiak.

The Alaska Federation of Natives (AFN) provided testimony in favor of all areas currently classified as rural to remain rural and for Ketchikan’s designation to be changed to rural. AFN noted that Title VIII of ANILCA, although racially neutral, was enacted to protect the subsistence rights of Alaska Natives.

Comments from Sitka, Kodiak, Ketchikan, and Saxman expressed similar main themes. People from all four communities commented that economic downturns have made their communities more, not less, rural since 1990. The primary theme in the comments is that these communities are rural because they possess significant characteristics of a rural nature. Many people said dependence on the subsistence way of life is the characteristic that makes their community rural. They said this dependence includes communal harvests and sharing of fish and wildlife resources as the basis of community interdependence.

Comments from these four communities include descriptions of mixed cash-subsistence economies. The cash base of these economies varies from commercial fishing, timber harvest, and tourism. Due to the

seasonal nature and economic fluctuations of the limited cash base of these economies, the subsistence aspect of these mixed economies maintains their sustainability. Increased dependence on subsistence harvests due to increasing fuel prices, which has led to increased costs for transportation, food, and heating, was widely noted. Rising fuel costs have increased the isolation of these island communities.

Most people said that subsistence is essential to their physical, spiritual, and cultural health and the survival of their community. The social and economic importance of subsistence harvests of fish and wildlife was repeatedly emphasized.

The use of population thresholds is not well supported. Most people commented that the character of their community cannot be evaluated by the number of people who happen to live there at a given time. They also stressed that fish and wildlife populations are healthy in their areas and subsistence harvests do not threaten their sustainability. Residents of these four communities discussed the fact that they are surrounded by vast tracts of federal land which precludes the possibility of major industry and high density population growth that would lead to their community being or becoming nonrural.

Further summary is provided below by community for the written public comments received during the comment period. In regard to other communities, one comment was submitted for the Homer Area, two for the Kenai Area, and one for the Delta Junction Area. Senator Gary Stevens submitted a letter in support of the continued rural status of the Fritz Creek East and North Fork Road areas. The Kenaitze Indian Tribe IRA requested rural status for Sterling. A resident of Kasilof expressed concern about continued nonrural status for Kasilof, but was not opposed to nonrural status for Sterling. The Ahtna Tene Nene' Subsistence Committee commented that Fort Greely should not be considered rural because it is a transient military community.

Sitka

All comments, with one exception, supported the continued rural status of Sitka. Written testimony in support of Sitka remaining rural was submitted by 149 individuals. Resolutions in favor of rural status for Sitka were submitted by the City and Borough of Sitka, the Sitka Municipal Assembly, and Sitka Tribe of Alaska. Organizations that submitted comment in favor of continued rural status for Sitka included the Shee Atika Corporation, Sitka Conservation Society, and Organized Village of Kake.

Numerous people described their seasonal subsistence harvest round and the wide variety of subsistence resources they gather from the forest and the sea. Additionally, Sitkans cited ADF&G Division of Subsistence/Sitka Tribe of Alaska subsistence harvest data to illustrate their subsistence use of fish and wildlife. According to these data, it was said, approximately 205 pounds per person are harvested and a wide variety of species, at least 50, are consumed. Ninety-seven percent of households in Sitka used subsistence resources in the study year of 1996.

Several people noted the lack of higher education opportunities and the scarcity of medical specialists in Sitka.

As noted earlier, many people described Sitka's mixed cash-subsistence economy. Several people noted Alaska Pulp was the major employer in the community until it closed in 1993. The loss of the mill has had a major negative ripple effect on Sitka's economy. Several noted that Sitka's population has barely risen since 1990, and that it fell after the closure of the mill when the community lost over 400 full time jobs, which also led to U.S. Forest Service cuts of full time jobs. The mill also contributed to Sitka's tax base. The loss of the mill families has led to decreased public school enrollment and decreased funding for Sitka schools.

People said that since the closure, the hospital has become the primary employer. Many people rely on seasonal employment such as tourism and commercial fishing; however, fishing is not as profitable as it once was. Numerous people spoke of exorbitant housing costs. They also said electricity costs are not a good benchmark for Sitka because their electricity is generated by hydroelectric power. They cited the rising costs of other types of fuel as a serious issue. These factors have led to an increased dependence on subsistence harvests.

Almost all who commented complained about recent dramatic cuts in ferry service to Sitka. They also commented that only one airline serves the community. Three people provided detailed testimony that Hoonah, said to be a clearly rural place, receives more ferry stops and more flights than Sitka. Transportation costs are increasingly expensive and people said it makes off-island travel prohibitive.

Several people who testified described Sitka as a hub for nearby villages. Many people said that they have become more dependent on subsistence due to the downturn in the community; Sitka has become more rural since 1990, not less. It was noted that the whole community is aware of the connection between subsistence and the economic and social life of the Tlingit, and that without it, Sitka would lose a large part of its soul.

Kodiak

All comments supported the continued rural status of Kodiak. Written testimony in support of Kodiak remaining rural was submitted by 56 individuals. Over 1,700 people signed a petition for Kodiak to remain rural, submitted by Woody Island Tribal Council. Resolutions in favor of rural status for Kodiak were submitted by the Kodiak Island Borough, Kodiak Chamber of Commerce, Sun'aq Tribe of Kodiak, Kodiak Democratic Party, Rural Cap, Senior Citizens of Kodiak, Leisnoi-Woody Island Tribal Council, and Natives of Kodiak. Organizations, governments, and government representatives that submitted testimony in favor of continued rural status for Kodiak included the City of Kodiak, Representative Gabrielle LeDoux, Senator Gary Stevens, Alaska Mental Health Trust Authority, Afognak Native Corporation, Kodiak Area Native Association, Kodiak Fish and Game Advisory Committee, Kodiak Historical Society, Kodiak Kiwanis, Kodiak Rural Roundtable, and Southeast Intertribal Fish and Wildlife Commission.

Residents of Kodiak compiled a list that enumerated over 200 species that make up their subsistence harvests. Several people provided testimony that cited ADF&G Division of Subsistence data from the early 1990s. It was said that the ADF&G data indicate that residents of Kodiak harvest approximately 155 pounds of subsistence resources per person per year, virtually all Kodiak residents used subsistence resources, and 84% share them.

City and Borough officials provided testimony that they provide separate services for their respective communities. Several people described the Coast Guard Base as a completely self-contained enclave.

As noted earlier, many people testified that Kodiak has become more, not less, rural since 1990. City and Borough officials claimed that the population has decreased and some small increases are due to village residents moving into Kodiak, which is the hub of the Island economy and community. They questioned what has changed since 1990 that would now make them nonrural.

Many people commented that the Island-wide Kodiak economy is in a downturn due to the low value and increased regulation-privatization of commercial fisheries, rising fuel costs, increased unemployment, and increased cost of living. Many people described a mixed cash-subsistence economy. Due to the

downturn in the cash sector of the Kodiak economy, many people said their dependence on subsistence has increased.

Numerous people described Kodiak's isolation because it is only accessible by boat or plane. They noted many cancellations of ferries and planes due to weather and explained that increased fuel prices have made off-island travel less frequent.

Most people testified that the subsistence lifestyle of Kodiak is a significant rural characteristic of the community. Alutiiq and other Kodiak residents stressed the cultural and social importance of subsistence to their community. They said it embodies their socioeconomic ties to each other and to their environment.

Ketchikan

All comments, with three exceptions, supported changing the status of Ketchikan from nonrural to rural. Written testimony in support of Ketchikan becoming rural was submitted by 72 individuals. A resolution in favor of rural status for Ketchikan was submitted by Alaska Native Brotherhood and Alaska Native Sisterhood, Grand Camp. Kuiu Thlingit Nation submitted testimony in favor of rural status for Ketchikan.

Most people who testified described their increasing dependence on subsistence harvests and the wide variety of subsistence resources they gather from the forest and the ocean. Several people expressed skepticism about the accuracy of the subsistence harvest estimate of 33 pounds per person per year cited in the staff report. This data is from permits, not ADF&G Division of Subsistence surveys. A 2006 subsistence survey by the Ketchikan Indian Community, also cited in the staff report, indicated that Ketchikan residents use 90 pounds of subsistence resources per person, and 80% of Ketchikan households use subsistence resources.

Many people described a very depressed economy since the closure of the pulp mill. They said there is mostly seasonal employment related to tourism; there is not much full time work. They described a mixed cash-subsistence economy and their increasing dependence on subsistence. Several people commented that Ketchikan's population has decreased and Ketchikan has become rural since the original nonrural determination was made. Like Kodiak and Sitka, Ketchikan was described as a hub community for the surrounding area. Numerous people said the isolation and expense of living on an island has increased with fuel prices. Many people said this combination of factors indicates Ketchikan should be reconsidered as rural.

Several people commented about the potential community groupings and said that Ketchikan, Saxman and the surrounding communities should be classified the same, either all rural or all nonrural. They said the regulatory wedge that currently separates them is not healthy.

Saxman

All comments, with the exception of two individuals from Ketchikan, supported the continued rural status of Saxman. The two people from Ketchikan said the two communities should be classified the same, either both rural or both nonrural. Written testimony in support of Saxman remaining rural was submitted by 11 individuals. Organizations and governments that submitted testimony in favor of continued rural status for Saxman included Alaska Native Brotherhood and Alaska Native Sisterhood Camp #15, Organized Village of Saxman, and Kuiu Thlingit Nation.

Most of the people who testified described their multigenerational subsistence harvests and traditions. According to data from ADF&G Division of Subsistence surveys conducted in 2000, Saxman residents reported an annual subsistence harvest of 217 pounds per person per year. They described a wide variety of resource use.

Saxman residents were adamant that their community is not socially or economically integrated with Ketchikan. They noted that Saxman has its own municipal and tribal governments and social infrastructure. They questioned what has changed since 1990.

Those who commented described a mixed cash-subsistence economy, with subsistence as the base of the economy. They described limited employment opportunities but a tightly interdependent community in which resources are shared through traditional social networks.

A couple of people said that Saxman students' attendance at the high school in Ketchikan does not show integration of the two communities. Instead, they said it highlights the differences between them. They reported a much higher dropout rate for students from Saxman when compared with the rate for students from Ketchikan, because the Saxman students are not part of the Ketchikan community.

One person commented that the important role played by traditional harvest is not a part of the criteria, and that under the current criteria we lack an appreciation and understanding for the subsistence way of life.

CONSIDERATIONS IN RESPONSE TO RECOMMENDATIONS AND COMMENTS

This stage in the decennial review of rural determinations centers on the Board considering the proposed rule of August 2006 in relation to Council recommendations and public comments. The role of the staff in conducting assigned analyses was in an earlier stage of the process. However, some considerations are presented here to provide perspective on main themes expressed in the recommendations and comments in context with the analytical work previously completed by staff. Discussion follows on the grouping of communities and areas, on population size and density, on the regulatory population threshold levels, on community characteristics, on consistency of approach for Sitka and the Kodiak Area, and on other considerations.

Grouping of Communities and Areas

As noted earlier, communities and areas that are economically, socially, and communally integrated are to be grouped for evaluation purposes. The resulting groupings are evaluated based on population size and rural or nonrural characteristics. The grouping step needs to be conducted objectively, independent of the effect of the outcome on status determination. The three indicators the Board directed staff to use in the evaluation of groupings, described previously, were subject to public comment in an earlier stage of the process.

For example, if there is an established nonrural area, and the question arises as to whether a nearby place classified as rural should be included in the grouping, the evaluation should not be affected by awareness that to do so would mean a change to nonrural status. Similarly, if several proximal places, currently classified as rural, are assigned for analysis as to whether they should be grouped, the analysis should not be affected by awareness that the more places included in a grouping the larger the population total, which could potentially contribute to a change in status.

It should also be noted that places in a grouping need not be economically, socially, or communally homogenous in order to be included. The term “integrated” as used in this context is synonymous with “combined” or “joined.” Portions of a nonrural grouping may appear more rural than other portions of the grouping, but may still be combined or joined in one area.

Take, for example, the Municipality of Anchorage nonrural grouping, which was not assigned for further analysis in this decennial review of rural determinations, and for which no changes are proposed by the Board. This grouping includes the densely developed downtown and midtown business districts, military bases, numerous residential neighborhoods that vary substantially in socioeconomic characteristics, and more sparsely developed areas on the hillside and along the highways to the north and south, where multi-acre lots and moose and bear encounters are not uncommon. A walk along an unmaintained gravel road on the Anchorage hillside has a very different look and feel than a walk downtown, which may be more than 15 miles distant. However, the places included in this grouping are economically, socially, and communally integrated to an extent that has warranted a shared grouping and status. A neighborhood on the Anchorage hillside, were it located distant from other settlements, might be considered rural, but the hillside neighborhoods are not settlements viewed in isolation, they are considered part of the larger Anchorage nonrural grouping.

Population

Evaluation of population size is a key step in rural/nonrural determinations. Federal subsistence regulations identify presumed rural and nonrural categories in terms of population size. The plain meaning of the term “rural” involves population.

Since larger population size may be seen as an impediment to maintaining or acquiring rural status for a community or area, there is an incentive to minimize the importance of population size as a factor, and/or to not support including portions of the total population in the assessment of a community’s size. Federal subsistence regulations specify that “population data from the most recent census conducted by the United States Bureau of Census as updated by the Alaska Department of Labor shall be utilized in this process.” The staff analysis of communities and areas as assigned by the Board (OSM 2006) made use of population data from those sources.

Whether or not individuals are eligible to, or choose to, participate in subsistence activities, or are in the military, or have citizenship status, or are more transient than others, does not mean that those individuals should be discounted from the population estimate for a community or area of interest. Census population data, supplemented by Alaska Department of Labor estimates for years between decennial censuses, are the best available population information. The assessment of whether a community or area is rural or nonrural needs to be made independent of the consequences for eligibility for the subsistence priority under ANILCA, and population size is a starting point in that assessment.

Population Density

The intuitive approach to population density is to relate the population of a place of interest to the geographic area of that place. Some comments speak to concerns about the varying boundaries of particular cities or boroughs, or the need to consider that geographic features such as mountains and ocean may limit dispersion of residents. The staff analysis assigned by the Board (OSM 2006) recognized problems posed by calculating densities using government boundaries, such as cities and boroughs, which can vary greatly in size independent of population sizes, making densities based upon such boundaries not comparable. Therefore, a standardized geographic approach was used that had been developed by Wolfe

and Fischer (2003). That approach also takes into account the influence of neighboring populations on the density of the place of interest, if they fall within the standardized geographic area.

Population Thresholds

Wolfe and Fischer (2003) provide references to the observation that the demarcation between rural and nonrural populations varies considerably among and within government programs. They note, for example, that in 2000 the U.S. Census defined “urban” as incorporated places or census designated places of 2,500 or more persons. The U.S. Office of Management and Budget, since 1990, has defined “metropolitan areas” for certain Federal programs as areas containing core counties with one or more central cities of at least 50,000 residents or with a Census Bureau-defined urbanized area and a total area population of 100,000 or more, and fringe counties that were economically tied to the core counties. Additional examples are provided by Wolfe and Fischer (2003), reinforcing the point that there is considerable variation.

For the Federal Subsistence Management Program, the presumptive status of communities and areas based on population size relative to the regulatory thresholds is a starting point in making rural/nonrural determinations, subject to the consideration of community characteristics. Rationale for the population thresholds identified in Federal subsistence regulations was provided with publication of the final rule on rural and nonrural determinations in 1991 (Federal Register Vol. 56, No. 2, January 3, 1991, page 238), in which the following was noted:

...The number 2,500 was selected because it is the figure used by the U.S. Census Bureau to divide rural from nonrural. A community between 2,500 and 7,000 bears no presumption as to its rural or nonrural status. Some communities that fall in this population range may have rural characteristics.

Communities 7,000 or greater in population are presumed to be nonrural. The 7,000 population level was chosen because Ketchikan, the smallest of the nonrural 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 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 nonrural community. This flexibility is consistent with approaches other Federal agencies have used to determine if communities are rural...

Testimony at the time of the initial determinations, and again during this first decennial review, has challenged the appropriateness of the derivation of the 7,000 threshold from the Ketchikan population level. The point made is that the 7,000 level was the approximate size of Ketchikan City at the time of ANILCA passage, but that the greater Ketchikan area had a population of about 11,000 at that time. The concern is that the area population of 11,000 should have been taken to represent Congressional intent, since the approach as implemented requires grouping of economically, socially, and communally integrated places.

Whether the regulations should describe a threshold of 11,000 derived from the Ketchikan Area, or 7,000 derived from the City of Ketchikan, has no effect on the outcome of this decennial review. Existing regulations give the Board sufficient latitude to deviate from the presumption thresholds as warranted. Communities and areas of all sizes were given adequate consideration, and multiple opportunities were provided for review and comment by Regional Advisory Councils, the State of Alaska, and the public.

None of the communities or areas (as defined by grouping in the course of this review) proposed by the Board for change in status were in the population range of 7,000 to 11,000. However, further evaluation of the 7,000 versus 11,000 population threshold, given the requirement for the grouping of economically, socially, and communally integrated places, would respond to the concern that has been raised, and may bring a more broadly shared interpretation of Congressional intent for application to future decennial reviews.

Community Characteristics

Federal subsistence regulations list the characteristics (also listed in the introduction of this report) which may be used. Further, the regulations state that characteristics used are not limited to those listed. This regulatory construction provides substantial latitude to the Board in the type of community characteristics used to evaluate rural or nonrural status. All of the five listed characteristics were addressed with data for one or more indicators in the historical (1990) and current (2006) tables presented in appendices to the June 2006 staff analysis report to the Board (OSM 2006), and selected indicators were also presented in graphs for ease of visual interpretation. Characteristics were evaluated for communities using the data as available.

There are no specific quantitative thresholds for the characteristics, nor a requirement for a certain portion to be of a particular type. Rather, whether the characteristics of a community or area are indicative of rural or nonrural status is a collective assessment that, in the end, rests on Board judgment.

Consistency of Approach for Sitka and the Kodiak Area

Some questions have arisen as to whether adequate review was provided for Sitka, given that it was not assigned by the Board for further staff analysis in December 2005. The claim is that to have not done so was inconsistent with the approach intended for this review. There is also the related claim that this is inconsistent with the approach taken for the Kodiak Area. To address these concerns, we will need to recall the approach for the initial steps in the review process, which was presented to the Councils for their consideration during the February–March 2005 Council meeting window, coincident with a public comment period.

OSM (2005*b*) noted that there were 300 communities or areas (as grouped by the Federal Subsistence Management Program) in Alaska in 2000, using data from the 2000 U.S. Census. The initial review work by staff in support of the Board, conducted with an emphasis on what has changed since the initial determinations were made in 1990, was reported to the Board in July 2005 (OSM 2005*b*). The Board then proposed a list of communities and areas for further analysis, which was subjected to public comment and Council review and recommendation during the September–October 2005 Council meeting window. Sitka was one of two places (the Kodiak Area being the other) proposed by the Board as a candidate for further analysis because it is rural in status but grew further over the 7,000 threshold between 1990 and 2000, which was one of the triggers for consideration as outlined in OSM (2005*d*). As reported by OSM (2005*c*), that growth amounted to 247 people (or 3%), from 8,588 in 1990 to 8,835 in 2000 (using Sitka City and Borough as the unit of interest).

The initial steps in the review process winnowed the number of communities and areas proposed for further analysis from the potential scope of 300 to 10. The public comment period in the fall of 2005, and the Board public meeting in December 2005, provided further information and feedback on the first phase of the review, with the Board seeking to learn more and being open to adding communities and areas to, or removing them from, the list for further analysis.

Based on public comments and Council recommendations, and testimony at the December 2005 Board public meeting, the Board added to, and removed from, the list proposed for further analysis in making its assignment to staff for further analysis. In the case of Sitka, the prevailing view of the Board was that sufficient information had been obtained to preclude the need for further staff analysis. The subsequent staff report to the Board on the assigned further analyses (OSM 2006) included historical and current information on population and community characteristics for Sitka along with other places from around the state, in carrying forward the range of coverage that had been provided in 1990.

Regarding consistency of treatment of the Kodiak Area, it too is rural in status but was reported to have grown further over the 7,000 threshold between 1990 and 2000 (OSM 2005*b*). For the Kodiak Area, however, grouping questions were also at issue. It was noted that “[t]he proposed further analysis would address how to best define the Kodiak area, and the population data and community characteristics associated with that area” (OSM 2005*c*). The subsequent analysis for the Kodiak Area (OSM 2006) examined how the area had been grouped in 1990, and examined grouping considerations for the current review. The relevant point here is that, in the Board’s judgment, it did not have sufficient information on the grouping and status of the Kodiak Area at that point in the process to forgo assigning further staff analysis in December 2005.

Other Considerations

In this concluding subsection, three additional aspects of feedback that arose will be addressed.

This first decennial review of rural/nonrural determinations was conducted with an emphasis on what has changed, but allowing for other considerations. In testimony at hearings and in recommendations and comments, perspectives were provided on the degree of change that has occurred in various communities and areas. OSM (2006) presented tables and graphs providing historical and current population data and indicators for all five community characteristics identified in regulation. Ultimately, whether changes in communities and areas, or other considerations, warrant regulatory action, rests with the judgment of the Board.

A Council recommendation questioned the characterization in the proposed rule of the high school attendance situation in Delta Junction, an aspect of grouping considerations. Although no regulatory changes are proposed involving Delta Junction, this concern is addressed here. The proposed rule states that “the majority of the high school-aged students from Big Delta, Deltana, and Fort Greely attend high school in Delta Junction.” While there are home-school, correspondence, and alternative school options, the high school in Delta Junction is understood to be the primary high school campus facility in the vicinity, to which most high school-aged students in the vicinity commute.

Comments were made about the status of the road in outlying areas from Ketchikan. The proposed rule states that “most of the Remainder is included in the nonrural Ketchikan Area, established in 1990, except for extensions of the highway to the north and south that have since occurred.” The main road in the outlying areas was reportedly gravel at the time of the initial determinations in 1990. In more recent years the road was chip-sealed. Therefore, it would be more correct to state that the main road beyond the current nonrural boundary was upgraded after 1990, not that it was extended.

LITERATURE CITED

OSM (Office of Subsistence Management). 2005*a*. Decennial review of rural determinations: Public comments received during the January 31–April 1, 2005 comment period. June 22, 2005. Anchorage.

OSM (Office of Subsistence Management). 2005*b*. Decennial review of rural determinations: A report to the Federal Subsistence Board on initial comments received and considerations for further analysis. July 15, 2005. Anchorage.

OSM (Office of Subsistence Management). 2005*c*. Decennial review of rural determinations: Summary of comments and recommendations received on proposed further analysis and related considerations. November 21, 2005. Anchorage.

OSM (Office of Subsistence Management). 2005*d*. Informational summary of initial steps in the decennial review of rural determinations. February 4, 2005. Anchorage.

OSM (Office of Subsistence Management). 2006. Rural determinations decennial review: Analysis of communities and areas as assigned by the Federal Subsistence Board. June 23, 2006. Anchorage.

Wolfe, R.J., and V. Fischer. 2003. Methods for rural/nonrural determinations for Federal subsistence management in Alaska. Final Report: Analysis and recommended methodology. Submitted to: USFWS, Anchorage, Alaska. January 31, 2003.

APPENDIX A

**PROPOSED RULE ON NONRURAL DETERMINATIONS
AS PUBLISHED AUGUST 14, 2006,
AND ASSOCIATED MAPS**

McKenzie; the Homer Area, including Fritz Creek East (except Voznesenka) and the North Fork Road area; and the Ketchikan Area. We propose no other changes in status. However, new information could lead to changes not proposed at this time.

DATES: We must receive your written public comments no later than October 27, 2006.

ADDRESSES: You may submit comments electronically to *Subsistence@fws.gov*. See **SUPPLEMENTARY INFORMATION** for file format and other information about electronic filing. You may also submit written comments to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Pete Probasco, Office of Subsistence Management; (907) 786-3888. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region, (907) 786-3888.

SUPPLEMENTARY INFORMATION:

Comments

Electronic filing of comments is preferred: You may submit electronic comments and other data to *Subsistence@fws.gov*. Please submit as MS Word or Adobe Acrobat (PDF) files, avoiding the use of any special characters and any form of encryption.

Background

In Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126), Congress found that "the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses * * *" and that "continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened * * *." As a result, Title VIII requires, among other things, that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a program to provide rural Alaska residents a priority for the taking of fish and wildlife on public lands in Alaska for subsistence uses, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, priority, and participation specified in sections 803, 804, and 805 of ANILCA.

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018-AT99

Subsistence Management Regulations for Public Lands in Alaska, Subpart C; Nonrural Determinations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This rule would revise the list of nonrural areas identified by the Federal Subsistence Board (Board, we, us). Areas determined to be nonrural are not eligible to participate in the Federal Subsistence Management Program on Federal public lands in Alaska. We propose to change Adak's status to rural. We also propose to add Prudhoe Bay and the Kodiak Area, including the City of Kodiak, the Mill Bay area, Womens Bay, Bell's Flats, and the Coast Guard Station to the list of nonrural areas. The following areas would continue to be nonrural, but we propose changes in their boundaries: the Kenai Area; the Wasilla/Palmer Area, including Point

The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural priority in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* caused the State to delete the rural priority from the subsistence statute which therefore negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990. As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Departments published the Temporary Subsistence Management Regulations for Public Lands in Alaska in the **Federal Register** (55 FR 27114). Permanent regulations were jointly published on May 29, 1992 (57 FR 22940), and have been amended since then.

As a result of this joint process between Interior and Agriculture, these regulations can be found in the titles for Agriculture and Interior in the Code of Federal Regulations (CFR) both in title 36, "Parks, Forests, and Public Property," and title 50, "Wildlife and Fisheries," at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain the following subparts: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with Subparts A, B, and C of these regulations, as revised May 7, 2002 (67 FR 30559), and December 27, 2005 (70 FR 76400), the Departments established a Federal Subsistence Board (Board) to administer the Federal Subsistence Management Program, as established by the Secretaries. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management (BLM); the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

Rural Determination Process

With a **Federal Register** notice on October 5, 1990 (55 FR 40897), the newly established Federal Subsistence Board initiated the preparation of an Environmental Impact Statement as a vehicle for widespread public review and participation in the development of the final temporary regulations. The rural determination process was included, and subsequently on November 23, 1990 (55 FR 48877), the Board published another notice 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 held in approximately 56 Alaskan communities, specifically to solicit comments on the proposed Federal Subsistence Management Program. On December 17, 1990, the Board adopted final rural and nonrural determinations, which were published on January 3, 1991 (56 FR 236). Final programmatic regulations were published on May 29, 1992, with only slight variations in the rural determination process (57 FR 22940).

Federal subsistence regulations require that the rural/nonrural status of communities or areas be reviewed every 10 years, beginning with the availability of the 2000 census data. The Board evaluated several options for conducting the review and decided to adopt an approach similar to that taken in 1990, which used criteria established in Federal subsistence regulations. The review was conducted with an emphasis on what has changed since 1990.

Although the process uses data from the 2000 census for its review, some data were not compiled and available until 2005. Data from the Alaska Department of Labor were used to supplement the census data.

During February–July 2005, the staff of the Federal Subsistence Management Program conducted an initial review of the rural status of Alaska communities, looking at the 2000 census data for each community or area with an emphasis on what had changed since 1990. From this initial review, staff compiled a report that included a proposed list of communities and areas for which further analysis appeared warranted. In addition, the report included the method used to develop this list. In August–October 2005, the public and Federal Subsistence Regional Advisory Councils were invited to comment on the results of this initial review.

At a meeting in Anchorage on December 6–7, 2005, the Board took public testimony and determined that

additional information was needed on 10 communities and areas before it decided upon any potential changes.

- For three communities, analysis was focused on evaluation of rural/nonrural status, as follows:

Kodiak, Adak, and Prudhoe Bay:

Currently Kodiak and Prudhoe Bay are considered rural, and Adak is considered nonrural. These three communities were further analyzed as to their rural/nonrural status.

- For five nonrural groupings of communities and areas, further analysis evaluated the possibility of excluding or including places, as follows:

Fairbanks North Star Borough:

Evaluate whether to continue using the entire borough as the nonrural area, or separate some outlying areas and evaluate their rural/nonrural status independently.

Seward Area: Evaluate whether to exclude Moose Pass and similarly situated places from this nonrural grouping and evaluate their rural/nonrural status independently.

Wasilla/Palmer Area: Evaluate whether to include Willow, Point MacKenzie, and similarly situated places in this nonrural grouping.

Homer Area: Evaluate whether to include Fox River, Happy Valley, and similarly situated places in this nonrural grouping.

Kenai Area: Evaluate whether to exclude Clam Gulch and similarly situated places from this nonrural grouping and evaluate their rural/nonrural status independently.

- In addition, two areas were recommended for further analysis as follows:

Ketchikan Area: Evaluate whether to include Saxman, and areas of growth and development outside the current nonrural boundary, and evaluate the rural/nonrural status of the whole area.

Delta Junction, Big Delta, Deltana and Fort Greely: Evaluate whether some or all of these communities should be grouped, and their rural/nonrural status evaluated collectively.

This list for additional analysis differed from the proposed list put out for public comment in July 2005, in that: (1) The scope of the review was broadened for the Ketchikan area, currently considered nonrural, to include an analysis of rural/nonrural characteristics of the entire area; (2) the rural/nonrural status of Prudhoe Bay was added; and (3) additional analysis of Sitka was not believed to be necessary.

Sitka, whose population had increased from 8,588 people in 1990 to 8,835 in 2000, had been identified as an area possibly warranting further

analysis. However, during its December 6–7, 2005, meeting, the Board heard substantial public testimony regarding the rural characteristics of Sitka and determined that no additional analysis was necessary. The Board is proposing to leave Sitka's rural status unchanged.

During January–May 2006, Federal subsistence staff conducted in-depth analyses of each community or area on the Board-approved list of communities and areas identified for further analysis.

On June 22, 2006, the Board met in executive session to develop the list of communities and areas they believe to be nonrural. Those communities and areas are identified in this proposed rule.

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 2,500 or less is deemed rural, unless it possesses significant characteristics of a nonrural nature, or is considered to be socially and economically a part of a nonrural area.

- A community with a population of more than 7,000 is deemed nonrural, unless it possesses significant characteristics of a rural nature.

- A community with a population above 2,500 but not more than 7,000 is evaluated to determine its rural/nonrural status. The community characteristics considered in this evaluation may include, but are not limited to, diversity and development of the local economy, use of fish and wildlife, community infrastructure, transportation, and educational institutions.

Communities that are economically, socially, and communally integrated are combined for evaluation purposes. The Board identified three guidelines or criteria for analysis to assist in its determination of whether or not to group communities in its review of rural determinations. The criteria to be used include: (1) Are the communities in proximity and road-accessible to one another? The first criterion, proximity and road accessibility, is considered a logical first step in evaluating the relationship between communities, and, applied in relation to the other two criteria, is considered a reasonable indicator of economic, social, and communal integration. (2) Do they share a common high school attendance area? The second criterion, regarding sharing a common high school attendance area, is taken to be an indicator of the social integration of communities. This is an improvement by way of modification from the former criterion of a shared

school district. The public pointed out in past testimony that attendance in a common school district often reflects political or administrative boundaries rather than social integration. A shared social experience is better captured by the shared high school criterion. (3) Do 30% or more of the working people commute from one community to another? This criterion, regarding whether working people commute from one community to another, was identified as providing meaningful information relating to the grouping of communities. Also, the U.S. Census uses this criterion because commuting to work is an easily understood measure that reflects social and economic integration. These criteria were not considered separately, but assessed collectively, with the recommendation to group communities being dependent upon the collective assessment.

Community characteristics and specific indicators that the Board used to evaluate rural/nonrural status include: (1) Economy—wage employment, percent unemployment, per capita income, diversity of services, cost-of-food index, and number of stores defined as large national retailers; (2) community infrastructure—including the cost of electricity; (3) fish and wildlife use—variety of species used per household, percentage of households participating, level of average harvest per capita for all subsistence resources combined, and level of average harvest per capita for salmon and large land mammals only; (4) transportation—variety of means, predominant means, and length of road system; and (5) educational institutions present in the community.

The Board's analysis and preliminary efforts to distinguish between rural places and nonrural places were heavily reliant on population size, but when the Board used other characteristics, its approach was based on a totality of the circumstances. Unemployment is generally higher and per capita income is generally lower in rural places than in nonrural places. Cost of food and cost of electricity were generally higher in the rural communities than in the nonrural. Subsistence per capita harvest of all resources shows a pattern of increasing amount with decreasing population size among nonrural areas, and typically higher levels in rural communities. The per capita harvest of salmon and large land mammals also shows a general pattern of increasing amount with decreasing population size among nonrural areas, and typically higher levels in rural communities. There were no large national retailers found in the rural communities

examined (other than Kodiak which is being proposed as nonrural), or in the three smallest nonrural communities or areas. Population density was generally higher for most nonrural places than it was for rural places.

Summarized below are the Board's recommendation for each area analyzed and the justification for that recommendation.

Adak: Recommend changing Adak's status from nonrural to rural. Following the closure of the military base, the community of Adak has decreased in population by 94 percent from 1990 to 2000. It currently has 167 residents (2005), which is well below the presumptive rural threshold of 2,500 persons. Adak is also extremely remote and is accessible only by boat or plane, with the nearest community (Atka) 169 miles away. With the changes that have occurred since the 1990s, Adak now has rural characteristics typical of a small isolated community.

Prudhoe Bay (including Deadhorse): Recommend changing Prudhoe Bay's status from rural to nonrural. In 2000 Prudhoe Bay had one permanent household comprised of five people. There were reportedly no permanent residents in February 2006. Prudhoe Bay has none of the characteristics typical of a rural community. Prudhoe Bay is an industrial enclave built for the sole purpose of extracting oil. The oil companies provide everything employees need: Lodging, food, health care, and recreation. The thousands of people in Prudhoe Bay do not live there permanently, but work multi week-long shifts. They eat in cafeterias and live in group quarters. There are no schools, grocery stores, or churches. Subsistence is not a part of the way of life. Hunting in the area and possession of firearms and ammunition are prohibited. Based on its industrial enclave characteristics, Prudhoe Bay should be determined to be nonrural.

Fairbanks North Star Borough: No changes to this nonrural grouping are recommended. In applying the grouping criteria as indicators of economic, social, and communal integration, the Board believes that the current nonrural boundary of the Fairbanks Area should continue to be defined as the Fairbanks North Star Borough boundary. No census designated places (CDPs) should be excluded from the nonrural grouping for the following reasons: (1) All CDPs are road accessible to one another. Although the Harding-Birch Lakes and Salcha areas are more sparsely populated than central areas of the borough, both communities include many occasional-use homes owned by Fairbanks residents. Further, both

places are home to only a few year-round residents. (2) The majority of the Borough's high school students are bused to one of the schools located in Fairbanks, North Pole, or Eielson. (3) The Remainder area of the North Star Borough should be included in the grouping because the majority of the population is road connected and over half (57 percent) of the workers residing in this area commute to Fairbanks for employment. Additionally, 75 percent of the workers living in Harding-Birch Lakes drive to the City of Fairbanks to work, and 71 percent of the working population in Pleasant Valley commute to the City of Fairbanks.

Delta Junction Vicinity: No changes are recommended for the rural status of Delta Junction, or the communities in the immediate vicinity. In applying the grouping criteria as indicators of economic, social, and communal integration, the Board believes that the four Delta Junction vicinity CDPs assigned for analysis (Delta Junction, Big Delta, Deltana, and Fort Greely) should be grouped as an area for purposes of rural/nonrural analysis because they fulfill the three guidelines for grouping: (1) All four CDPs are road connected and proximal; (2) the majority of the high school-aged students from Big Delta, Deltana, and Fort Greely attend high school in Delta Junction; and (3) in the two outlying CDPs, over 30 percent of the workers commute within the vicinity (41 percent of the workers living in Big Delta commute to either Delta Junction, Deltana, Fort Greely, or to a Remainder area within the Southeast Fairbanks Census Area, and 45 percent of the workers in Deltana commute to Delta Junction or Fort Greely).

The four places grouped into the Delta Junction Area should remain rural in status. The population size of the grouping (3,921) places it in the nonpresumptive midrange, and information on the characteristics of the grouping, although somewhat limited, is indicative of a rural character. The recent economic upswing to the area due to construction of the Missile Defense system at Fort Greely and development of the Pogo Mine is thought to be temporary.

Seward Area: No changes to this nonrural grouping are recommended. In applying the grouping criteria as indicators of economic, social, and communal integration, the Board believes that the Moose Pass, Crown Point, and Primrose CDPs should remain within the Seward Area grouping. Moose Pass, Crown Point, and Primrose CDPs meet all the criteria for grouping: proximity and road-

accessibility to the Seward Area; their students attend the high school in Seward; and the level of workers commuting to Seward for employment is greater than 30 percent.

Wasilla/Palmer Area: Include the Point MacKenzie CDP in the nonrural Wasilla/Palmer Area grouping; do not include the Willow CDP. The Board believes that the Point MacKenzie CDP meets all the criteria for grouping with the Wasilla/Palmer Area. The Point MacKenzie CDP is in proximity to the Wasilla/Palmer Area and road-accessible; their students attend Wasilla High School; and the level of workers commuting to the Wasilla/Palmer Area for employment is at 50 percent. This change would make Point MacKenzie part of a nonrural area, a change from its current rural status. The Board recommends that the Willow CDP not be included in the Wasilla/Palmer Area grouping. Students in the Willow CDP are located in two attendance areas for high schools, within and outside of the Wasilla/Palmer Area. The level of commuting for workers to the Wasilla/Palmer Area is at 23.9 percent, which is below the criteria identified for grouping.

Kenai Area: Adjust the boundaries of the nonrural Kenai Area to include all of the current Sterling CDP, and propose no change to the current grouping and status of Clam Gulch CDP as part of the nonrural Kenai Area. It appears that Clam Gulch CDP should continue to be included in the Kenai Area grouping because, although students of Clam Gulch CDP attend high school outside of the Kenai Area, the commuting of workers to the Kenai Area is on the order of 30 percent, and Clam Gulch is connected by paved highway to the Kenai Area, with which it has been grouped since initial determinations were made in 1990. It also appears that Coho CDP should remain within the Kenai Area grouping. Coho students attend a high school in the Kenai Area and the level of work commuting, at 69.5 percent, is significantly above the minimum criteria for grouping. The Sterling CDP has been part of the nonrural Kenai Area since 1990. For the 2000 census, the Sterling CDP has expanded in size, such that a significant portion of the CDP extends beyond the current boundary of the nonrural Kenai Area. The Board believes that the boundaries of the Kenai Area should be adjusted to include all of the current Sterling CDP. Students within the Sterling CDP go to high school within the Kenai Area and the level of commuting is at 61.2 percent of workers, well above the minimum criteria for grouping.

Homer Area: Adjust the boundaries of the nonrural Homer Area to include all of the Fritz Creek CDP (not including Voznesenka), and the North Fork Road portion of the Anchor Point CDP. This change would make Fritz Creek East, except for Voznesenka, and the North Fork Road portion of the Anchor Point CDP nonrural, a change from their current rural status. The Board has tentatively concluded for Fritz Creek East that, except for Voznesenka, the residents are economically, socially, and communally integrated with the Homer Area. Fritz Creek East is in proximity and road-connected to the Homer Area. The Homer High School attendance area includes their students, and 43.8 percent of their workers commute to the Homer Area. It appears that Voznesenka should not be included in the Homer Area because, while it is in proximity and road-connected to the Homer Area, the number of jobs shown as being located within the Homer Area is only 19.5 percent, and Voznesenka students attend high school in Voznesenka.

The Board believes that residents of the North Fork Road area fully meet two of the three criteria, proximity and commuting of workers. For the third criteria, although students have the option of attendance in Nikolaevsk School or Ninilchik High School, the vast majority go to Homer High School. This is sufficient basis for considering the North Fork Road area of the Anchor Point CDP to be economically, socially, and communally integrated with the nonrural Homer Area.

The Board believes that residents of the Happy Valley CDP fulfill only the proximity criterion for grouping with the Homer Area. Happy Valley students are within the Ninilchik School high school attendance area, and less than 30 percent of Happy Valley workers commute to the Homer Area (14.4 percent). It appears that residents of the Happy Valley CDP should not be included with the Homer Area.

It appears that the Nikolaevsk CDP, north of the Anchor Point CDP and connected to the Homer Area by the North Fork Road, does not warrant inclusion in the Homer Area. There is a K-12 school in Nikolaevsk, and data show that only 22 percent of jobs held by Nikolaevsk residents were located in the Homer Area.

It appears that residents of Fox River CDP, primarily in the communities of Razdolna and Kachemak Selo, do not meet any of the three criteria, which would indicate that Fox River residents are not economically, socially, or communally integrated with the Homer Area.

Kodiak Area: Define the Kodiak Area to include the road system, including the City of Kodiak, the Mill Bay area, Womens Bay, Bell's Flats, and the Coast Guard Station, but not including Chiniak, Pasagshak, and Anton Larsen, and change the status of the Kodiak Area, as defined, from rural to nonrural. The Board believes that the Kodiak Station CDP should be included in the Kodiak Area grouping. The Kodiak Station CDP directly fulfills two of the three criteria for being grouped in the Kodiak Area, and special consideration is warranted in relation to the third criterion: (1) The Kodiak Station CDP is road-connected and adjacent to the City of Kodiak; (2) the Kodiak Station CDP does not have a high school; all students attend high school in the City of Kodiak; and (3) the special circumstance of enlisted employment accounts for the overall commuting level of workers to Kodiak City being an estimated 11 percent of all working residents. However, this can be attributed to the fact that enlisted personnel residing on the base are by duty assignment bound to the base. Working dependents, who are not bound to employment on the base, virtually all work in Kodiak City. While the worker commuting criterion is thereby not met if one pools enlisted personnel and working dependents, ties to the Kodiak Area are otherwise evident. The Board believes that the Womens Bay CDP should be included in the Kodiak Area grouping. Womens Bay CDP fulfills all three criteria for being grouped in the Kodiak Area: (1) Womens Bay CDP is road-connected and proximal to the City of Kodiak; (2) Womens Bay CDP does not have a high school; students attend high school in the City of Kodiak; and (3) more than 30 percent of the working residents are employed in the City of Kodiak.

The Board believes that the Chiniak CDP should not be included in the Kodiak Area grouping because (1) although there is a road from Chiniak to the City of Kodiak, it is a minimum of a one-hour trip, and the 14 miles closest to Chiniak are unpaved; (2) there is a partial high school in Chiniak to grade 10, and only two-fifths of the high school-aged children attend school in Kodiak.

The Board believes that the road-connected Remainder area should be included in the Kodiak Area grouping, with the exception of the Pasagshak and Anton Larsen portions. The road-connected Remainder area, with the exceptions as noted, is proximal to the City of Kodiak; students from the road-connected Remainder area attend high school in the City of Kodiak; and more than 30 percent of the working residents

of the Remainder area are employed in the City of Kodiak. The road-connected Remainder area of the Kodiak Area includes people residing in Anton Larsen and Pasagshak. There is no information about these "sub-areas" of the road-connected Remainder area, thus it is unknown if students living in these areas are taught through correspondence, home-schooled, or travel to Kodiak to attend high school. It is also unknown how many people commute to Kodiak City to work. However, the Board determined that despite the lack of information regarding the three criteria for grouping, the remoteness of Pasagshak and Anton Larsen is comparable to the remoteness of Chiniak, and therefore elected to propose no change in the rural status of these areas.

The population of the Kodiak Area—estimated at approximately 12,000 in 2005—is well above the presumptive nonrural population of 7,000 in Federal regulations. The population has increased slightly since 1990. Kodiak's per capita income is relatively high and it also has a 2-year college, high diversity of services, a large national retailer, fast food restaurants, and roads linking the outlying area to the city. Of the communities examined during this analysis, the Kodiak Area is 34 percent larger in population than the next largest rural place, and its use of fish and wildlife is 24 percent lower. While the per capita harvest of subsistence resources is higher in the Kodiak Area than in some rural areas, it is well below the levels in some other rural communities.

Ketchikan Area: Define the Ketchikan Area to include Pennock Island, parts of Gravina Island, and the road system connected to the City of Ketchikan, except for the community of Saxman. Saxman would retain its current rural status, and the Ketchikan Area, as defined, would retain its nonrural status. Saxman is directly adjacent to Ketchikan, connected by road, and surrounded by the outlying Ketchikan development. Visually, the only distinguishing feature to indicate the boundary between Ketchikan and Saxman is a sign on the South Tongass Highway. Saxman has clearly been overtaken and is surrounded by the geographic expansion of Ketchikan; Saxman students attend high school in Ketchikan; and 64 percent of the workers in Saxman commute to Ketchikan for their employment, with another 8 percent commuting to the Remainder area of the borough to work. Even though the grouping criteria would indicate including Saxman with the Ketchikan Area, social and economic

characteristics indicate that Saxman should not be grouped in the Ketchikan Area. Saxman is a small, close-knit community that is socially and politically separate from Ketchikan. The residents of Saxman have two distinct entities to separate themselves from Ketchikan, the traditional government (Organized Village of Saxman) and the municipal government (City of Saxman). Socioeconomic indicators suggest distinctions between the two communities. For example, Saxman has a higher unemployment rate, lower per capita income, higher percentage of residents below the poverty level than those found in Ketchikan, and a 70 percent Native population. Another distinguishing characteristic of the community is that Saxman residents depend much more heavily on the harvest of subsistence resources. Saxman's average per capita harvest of 217 pounds is substantially more than has been estimated for the Ketchikan Area. Thus, while the grouping criteria lead to including Saxman with the Ketchikan Area, the unique socioeconomic characteristics of Saxman suggest that it should remain separate from the Ketchikan Area.

The Remainder fulfills all three criteria for grouping with the Ketchikan Area: (1) The Remainder, other than nearby Gravina and Pennock Islands, is road-connected to the City of Ketchikan; (2) Students in the Remainder attend high school in Ketchikan; and (3) Over 30 percent of the workers from the Remainder commute to work in the City of Ketchikan. Presently, most of the Remainder is included in the nonrural Ketchikan Area, established in 1990, except for extensions of the highway to the north and south that have since occurred.

The population of the Ketchikan Area was estimated at 12,720 in 2005 (excluding Saxman), having decreased slightly from 1990. Ketchikan possesses many nonrural characteristics, including having a 2-year college, a large national retailer, car dealerships, fast food restaurants, and roads linking the outlying surrounding area to the city. Although the pulp mill closed, there is still some diversity in the economy with tourism, fishing, fish processing, timber, retail services, and government providing the majority of employment. There is a hospital and a high diversity of services offered. The Ketchikan Area had the sixth highest population in the state in 2005, considering community groupings as defined by the Board. All other areas with higher populations are currently considered nonrural in Federal subsistence regulations. Three areas

with smaller populations are currently classified as nonrural and are not proposed for a change in status: the Homer Area, Seward Area, and Valdez. Harvest of subsistence resources in the Ketchikan Area is lower than is characteristic of rural communities.

This change would make the extended road connected areas of Ketchikan nonrural, a change from their current rural status.

The list of nonrural communities and areas, along with those other nonrural communities or areas whose status would remain unchanged, is published herein as the proposed rule. All other communities and areas of Alaska not listed herein would retain their rural determination. We propose to amend Section _____.23, which identifies those communities and areas of Alaska that are determined to be rural and nonrural. We have made maps available for the nonrural areas. The purpose of these maps is to provide to the subsistence user an overall graphic representation of the extent of the nonrural areas. To view maps, go to the Office of Subsistence Management Web site at <http://alaska.fws.gov/asm/home.html>. If you do not have access to the internet, you may contact the Office of Subsistence Management at the address or phone number shown at **ADDRESSES** or **FOR FURTHER INFORMATION CONTACT**, respectively, and we will send the maps to you.

During August–October 2006, the public and Federal Subsistence Regional Advisory Councils are invited to comment on the proposed rule. Hearings in Kodiak, Sitka, Saxman, and Ketchikan will be held in September and October 2006. The specific dates,

times, and locations will be announced in locally and Statewide—circulated newspapers or you may call the phone number shown at **FOR FURTHER INFORMATION CONTACT**. Additional hearings may be scheduled by the Board, as appropriate. In December 12–13, 2006, in Anchorage, Alaska, the Federal Subsistence Board will meet to consider the comments received and may make changes to the proposed rule. From the decisions made in December, the Board will develop a final rule for publication in the **Federal Register**. The effective date of any community or area changing from a rural to nonrural status is 5 years after the date of publication of the final rule in the **Federal Register**. For communities or areas that change from nonrural to rural, the effective date is 30 days after the date of publication of the final rule in the **Federal Register**.

Because the Federal Subsistence Management Program relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, we propose to incorporate identical text into 36 CFR part 242 and 50 CFR part 100.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and

staff analysis, and examined the environmental consequences of four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comments received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture—Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C, published May 29, 1992, implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. The following **Federal Register** documents pertain to this rulemaking:

FEDERAL REGISTER DOCUMENTS PERTAINING TO SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A AND B

Federal Register citation	Date of publication	Category	Detail
57 FR 22940	May 29, 1992	Final Rule	“Subsistence Management Regulations for Public Lands in Alaska; Final Rule” was published in the Federal Register establishing a Federal Subsistence Management Program.
64 FR 1276	January 8, 1999	Final Rule (amended) ..	Amended 7 FR 22940 to include subsistence activities occurring on inland navigable waters in which the United States has a reserved water right and to identify specific Federal land units where reserved water rights exist. Extended the Federal Subsistence Board's management to all Federal lands selected under the Alaska Native Claims Settlement Act and the Alaska Statehood Act and situated within the boundaries of a Conservation System Unit, National Recreation Area, National Conservation Area, or any new national forest or forest addition, until conveyed to the State of Alaska or an Alaska Native Corporation. Specified and clarified Secretaries' authority to determine when hunting, fishing, or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority.
66 FR 31533	June 12, 2001	Interim Rule	Expanded the authority that the Board may delegate to agency field officials and clarified the procedures for enacting emergency or temporary restrictions, closures, or openings.

FEDERAL REGISTER DOCUMENTS PERTAINING TO SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A AND B—Continued

Federal Register citation	Date of publication	Category	Detail
67 FR 30559	May 7, 2002	Final Rule	In response to comments on an interim rule, amended the operating regulations. Also corrected some inadvertent errors and oversights of previous rules.
68 FR 7703	February 18, 2003	Direct Final Rule	Clarified how old a person must be to receive certain subsistence use permits and removed the requirement that Regional Councils must have an odd number of members.
68 FR 23035	April 30, 2003	Affirmation of Direct Final Rule.	Received no adverse comments on 68 FR 7703. Adopted direct final rule.
68 FR 60957	October 14, 2004	Final Rule	Established Regional Council membership goals.
70 FR 76400	December 27, 2005	Final Rule	Revised jurisdiction in marine waters and clarified jurisdiction relative to military lands.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available from the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did not constitute a major Federal action significantly affecting the human environment and therefore signed a Finding of No Significant Impact.

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A section 810 analysis was completed as part of the FEIS process. The final section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program may have some local impacts on subsistence uses, but that the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

This rule contains no new information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. The information collection requirements described in the CFR regulations were approved by OMB under 44 U.S.C. 3501 and were assigned clearance number 1018-0075, which expires August 31, 2006. We will not conduct or sponsor, and you are not required to respond to, a collection of information request unless it displays a currently valid OMB control number.

Other Requirements

Economic Effects—This rule is not a significant rule subject to OMB review under Executive Order 12866. This rulemaking will impose no significant costs on small entities; this rule does not restrict any existing sport or commercial fishery on the public lands, and subsistence fisheries will continue at essentially the same levels as they presently occur. The number of businesses and the amount of trade that will result from this Federal land-related activity is unknown but expected to be insignificant.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of regulatory flexibility analyses for rules that will have a significant economic effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as tackle, boat, sporting goods dealers, and gasoline dealers. The number of small entities affected is unknown; however, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that the effects will not be significant.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these

regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Secretaries have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988 on Civil Justice Reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless the State program is compliant with the requirements of that Title.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), 512 DM 2, and E.O. 13175, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no substantial direct effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this

action is not a significant action and no Statement of Energy Effects is required.

William Knauer drafted these regulations under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Chuck Ardizzone, Alaska State Office, Bureau of Land Management; Greg Bos, Carl Jack, and Jerry Berg, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service; Dr. Warren Eastland, Pat Petrivelli, and Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, Alaska Regional Office, USDA—Forest Service provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

List of Subjects

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Secretaries propose to amend title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART —SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 would continue to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

2. In Subpart C of 36 CFR part 242 and 50 CFR part 100, § ____ .23(a) would be revised to read as follows:

* * * * *

§ ____ .23 Rural Determinations.

(a) The Board has determined all communities and areas to be rural in accordance with § ____ .15 except the following:

- (1) Fairbanks North Star Borough;
- (2) Homer area—including Homer, Anchor Point, North Fork Road area, Kachemak City, and the Fritz Creek area (not including Voznesenka);

(3) Juneau area—including Juneau, West Juneau, and Douglas;

(4) Kenai area—including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, and Clam Gulch;

(5) Ketchikan area—including all parts of the road system connected to the City of Ketchikan (except Saxman), Pennock Island, and parts of Gravina Island;

(6) Kodiak area—including the City of Kodiak, the Mill Bay area, the Coast Guard Station, Womens Bay, and Bells Flats;

(7) Municipality of Anchorage;

(8) Prudhoe Bay;

(9) Seward area—including Seward and Moose Pass;

(10) Valdez; and

(11) Wasilla/Palmer area—including Wasilla, Palmer, Sutton, Big Lake, Houston, Point MacKenzie, and Bodenber Butte.

You may obtain maps delineating the boundaries of nonrural areas from the U.S. Fish and Wildlife Service, Office of Subsistence Management.

* * * * *

Dated: July 24, 2006.

Peter J. Probasco,

Acting Chair, Federal Subsistence Board.

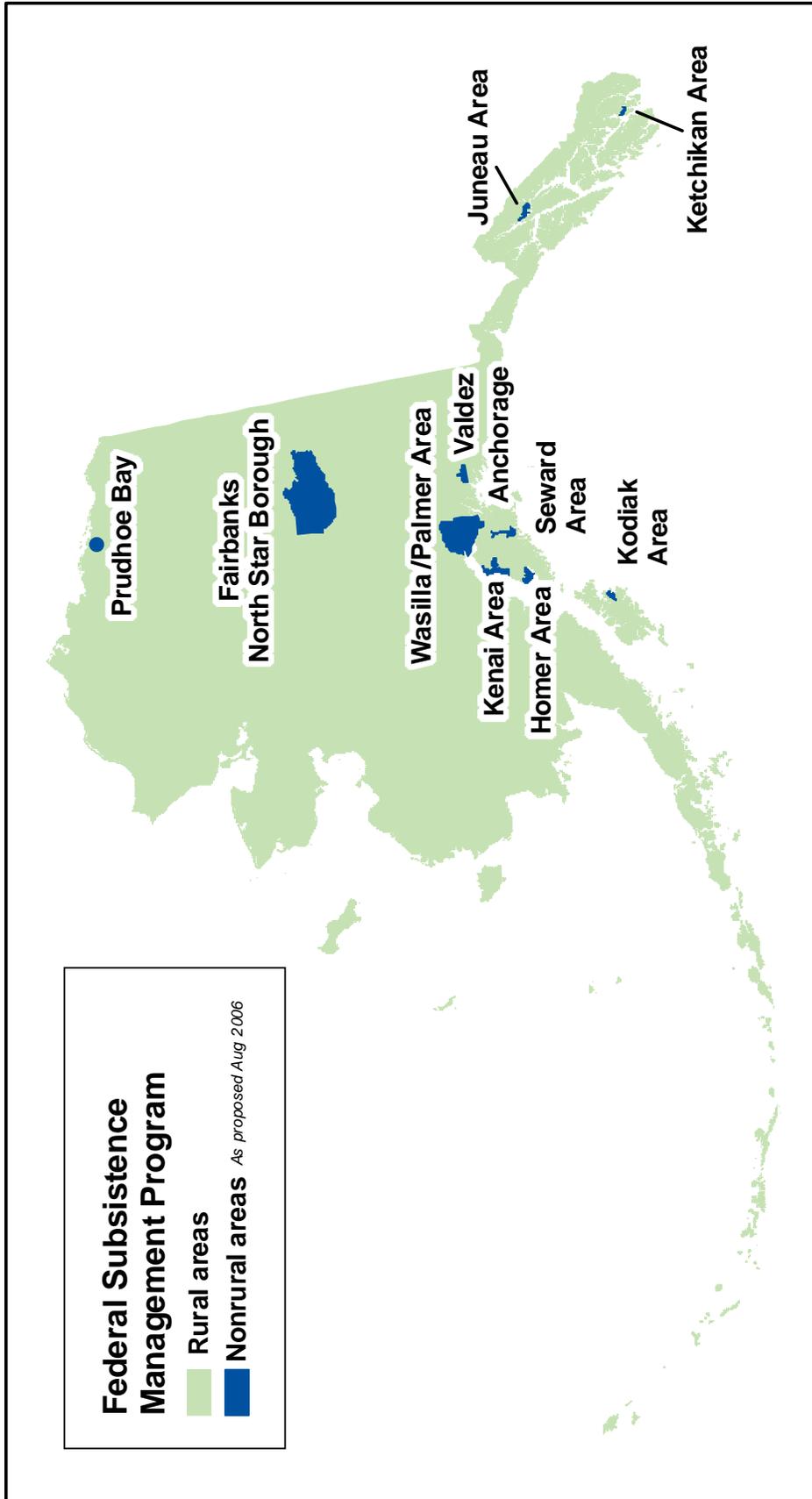
Dated: July 24, 2006.

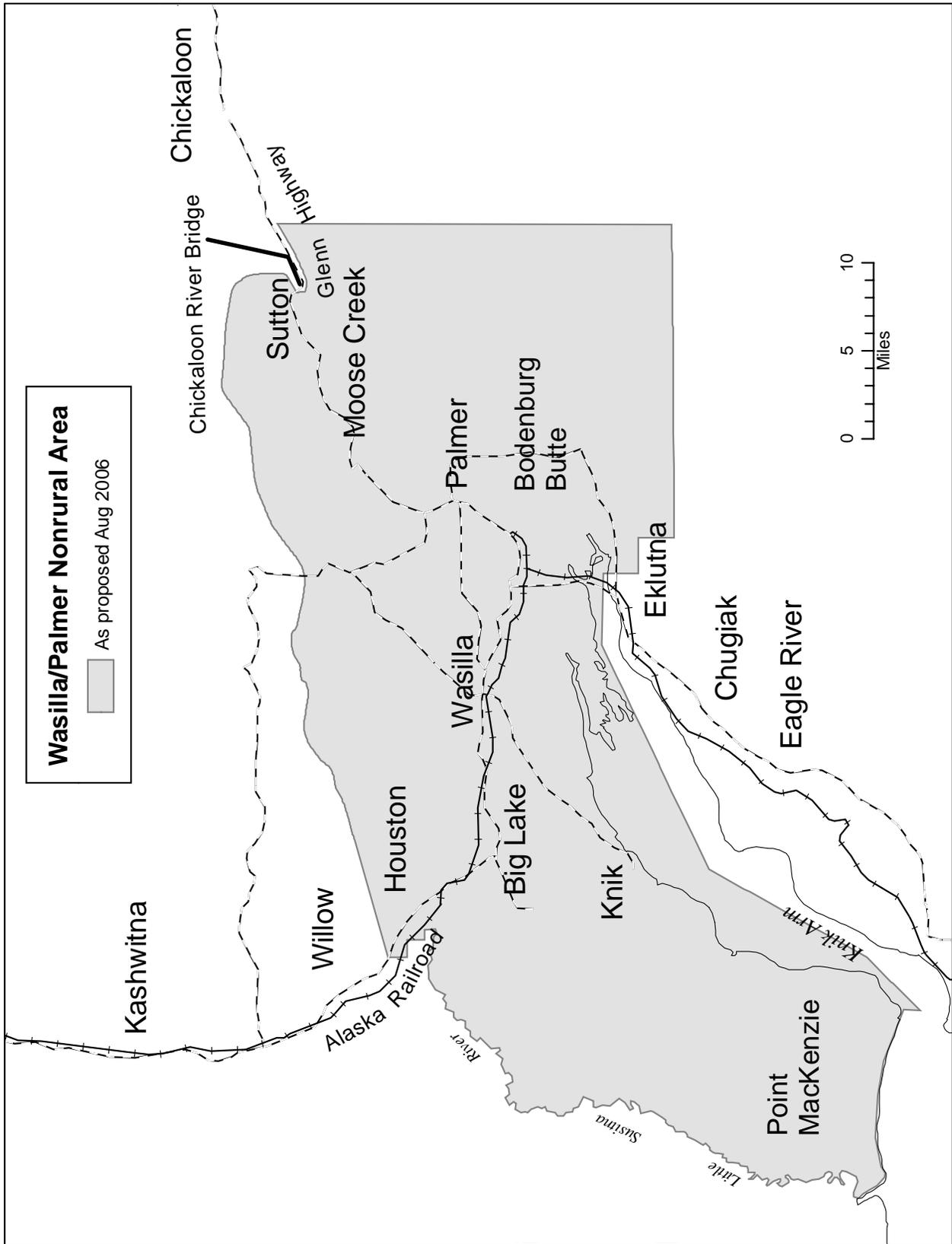
Steve Kessler,

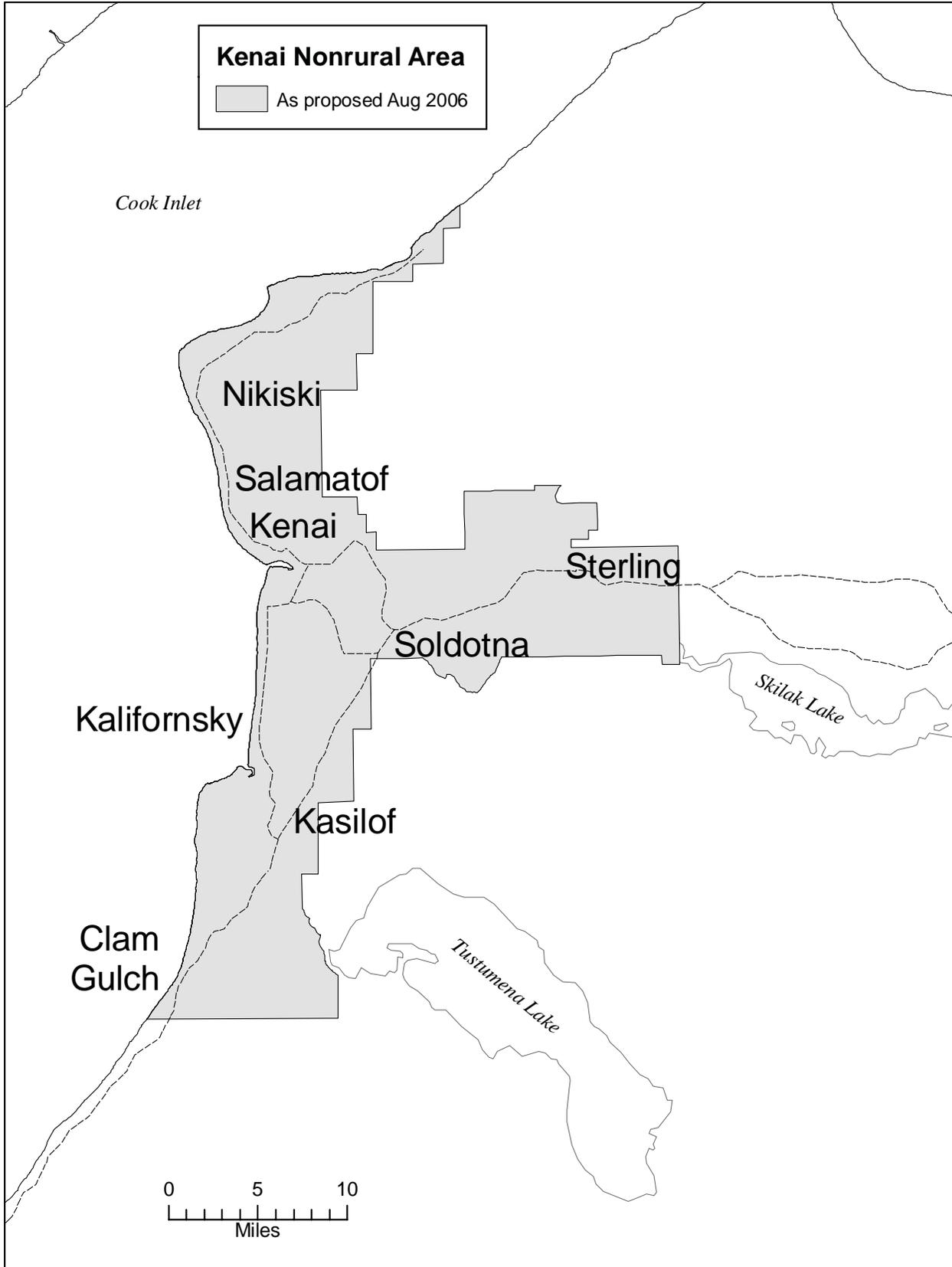
Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 06–6902 Filed 8–11–06; 8:45 am]

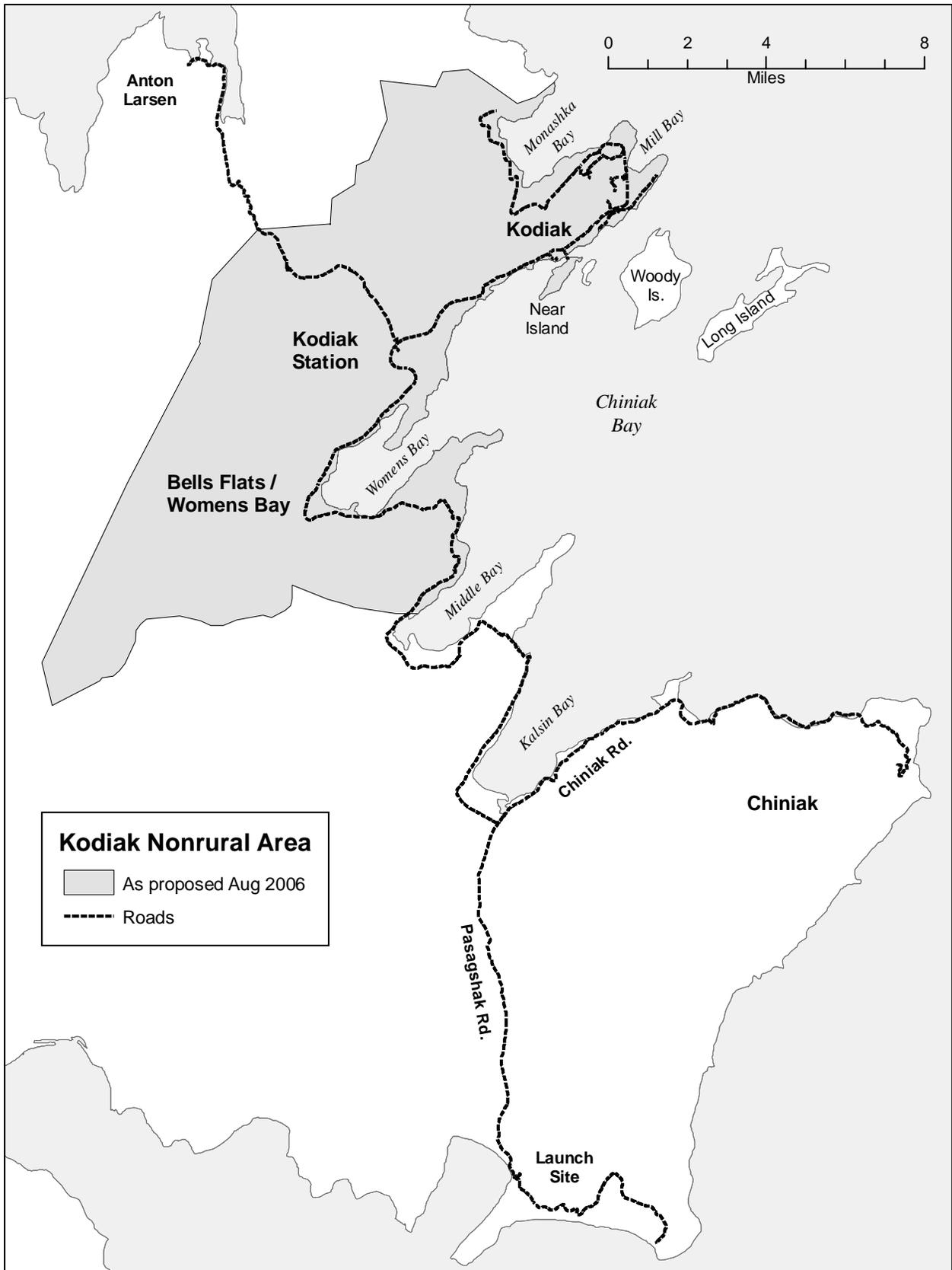
BILLING CODE 3410–11–P; 4310–55–P

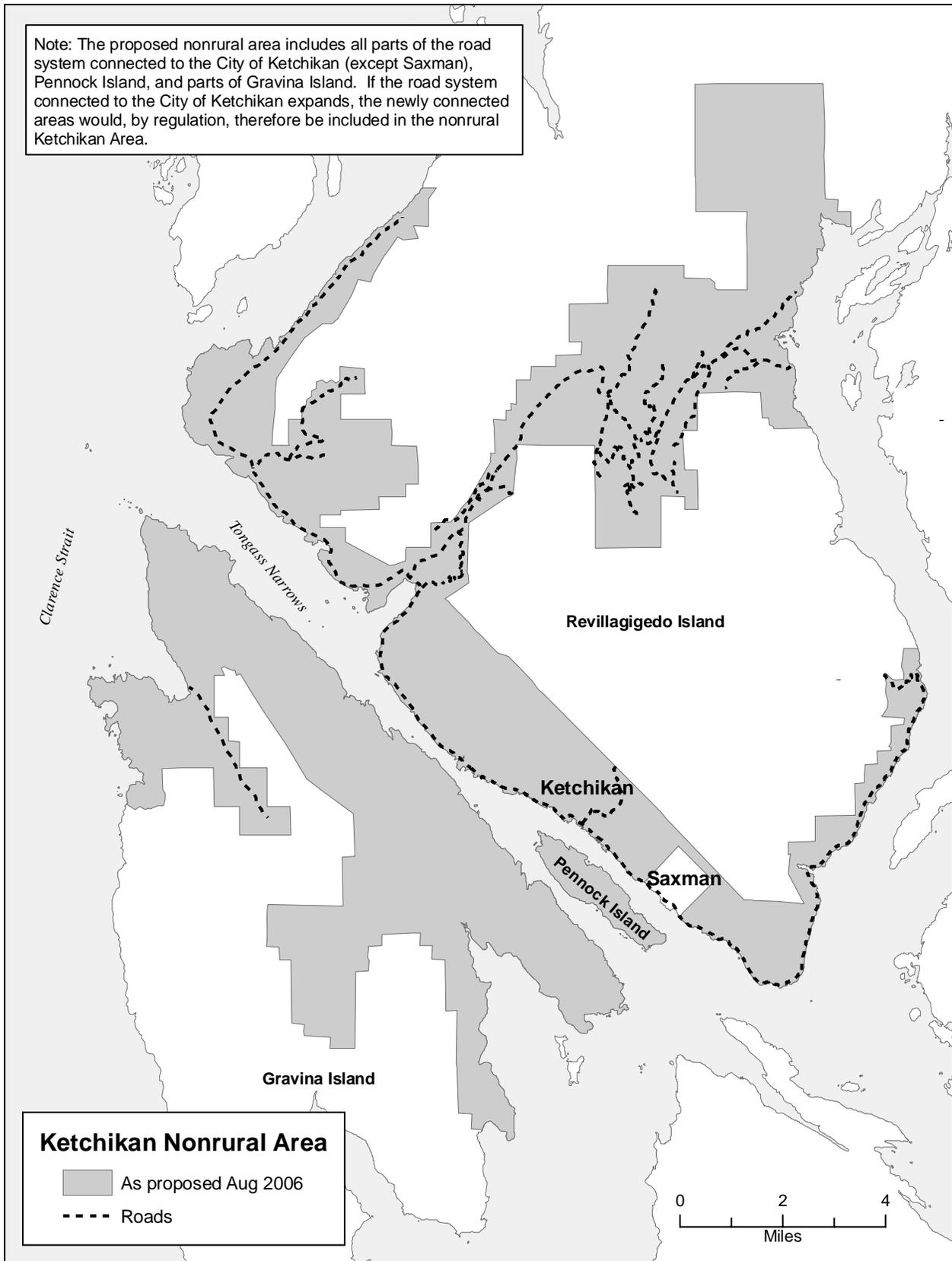












APPENDIX B

**KEY POINTS IN RESPONSE TO STATE OF ALASKA COMMENTS ON
THE FEDERAL REVIEW OF RURAL DETERMINATIONS**

A letter from ADF&G Commissioner McKie Campbell to the Board dated October 26, 2006, raises numerous concerns with the Federal review of rural determinations. The present OSM report provides a summary of main themes from all sources of input received, and some generalized considerations in response. Given the scope and detail of the State's comments, and the State's role in dual-management and in relationship to the Federal subsistence management program through the Interim Memorandum of Agreement, detailed response is provided here.

A. Procedural Inconsistencies

The State describes a portion of the Federal process timeline, then claims that “[t]his final analysis of communities is selective in its use of the above-mentioned criteria and does not address other communities whose status has changed significantly between the 1990 and 2000 census.”

Key steps in the Board's decennial review of rural determinations were outlined in an OSM report dated June 23, 2006, as follows:

“The comment and recommendation periods, meetings of the Board, and staff reports associated with implementation of this first decennial review of rural determinations are as follows:

- *February–March, 2005: Public comment and Council recommendation period on the process as it is initiated.*
- *July 2005: Board work session to propose a list of communities for further analysis and the review process to be used. A written staff report is presented on public comments and Council recommendations received and the initial staff review of existing rural determinations (OSM 2005b).*
- *August–October, 2005: Public comment and Council recommendation period on Board-proposed list of communities for further analysis.*
- *December, 2005: Board public meeting to decide upon an approved list of communities for further analysis. A written staff report is presented on public comments and Council recommendations received, and the staff evaluation (OSM 2005a).*
- *June, 2006: Board to develop a proposed rule to solicit public comments and Council recommendations on proposed rural/nonrural status of communities in Alaska. A written staff report on the detailed staff analyses is to be provided (this report).*
- *August–October, 2006: Public comment and Council recommendation period on proposed rule.*
- *December, 2006: Board public meeting to approve final rule, deciding upon the rural/nonrural status of communities in Alaska. A written staff report will be provided on public comments and Council recommendations received on the proposed rule, and the staff evaluation.”*

The June 23, 2006 OSM report is not selective in its use of the criteria. Tabular appendix tables and in-text graphics present historical and current population data and indicators for all five community characteristics identified in regulation. In addition, data is presented on population density, which is a characteristic not identified in regulation. Not all data types were available for all communities and areas, but relevant data were provided to the extent available.

The June 23, 2006 OSM report was not intended to address all communities or areas within which changes may have occurred, but rather those for which additional staff analysis was assigned by the Board. The Federal review process, from the beginning, involved opportunities for Council, State, and public input. The Board review is intended to progressively winnow the scope of candidate communities for potential change in status, or grouping and status, from the approximately 300 places in Alaska. The staff report near the end is focused on a technical record for communities and areas remaining in the forefront of Board consideration for such changes.

A 1. Inconsistent Application of Federal Regulations

The State claims that “[t]he Board did not use a consistent process for each of the communities in evaluating whether a community is rural or nonrural. That is true in a number of examples, but most clearly in its decision to maintain Sitka’s rural status without review or comparison to the standards of 50 CFR 100.15 and 36 CFR 242.15.”

The present OSM report prepared for the December 12–13, 2006 meeting of the Board addresses the issue of consistency of treatment in the case of Sitka. That generalized response will be supplemented here specific to the State’s claim. The State quotes a Board member from the December 2005 Board public meeting, not on the prevailing side, and the Solicitor’s Office, in part, in criticizing the level of consideration provided on Sitka. However, additional statements in the transcript from that meeting provide further perspective.

Marko Dapevich, Mayor of Sitka, provided testimony in which he stated, in part:

“In 1980 Sitka’s population was 7,803, above the 7,000 threshold when ANILCA was passed. At that time, Sitka was not identified as urban. Twenty-four years later Sitka’s population has increased by less than 1,000 to 8,805 in 2004. In the 1990 census, at 8,588, and the 2000 census at 8,835, there was an increase of 247, or .28 percent per year. Between the 2000 census and the 2004 census, Sitka population has dropped to 8,805. Since 1990 and 2004, the population has only increased .18 percent per year. The population number in Sitka are flat or declining and dropped between 2003 and 2004 by over one full percent, 92 people.

Over the last 10 years, ‘94 to ‘03, Sitka’s average birth rate was 127 per year, the average death rate is 50. The population has increased by an average number of 15 per year, not the 77 the birth/death ratio would suggest. If you do the math, that’s 52 people per year packing their things and leaving Sitka.

With 4,710 square miles, each of Sitka’s 8,805 residents could occupy over one-half square mile.

Bet’s ‘94 report states, and don’t ask me what this report is, quote, Sitka’s a community of diverse origins with several subgroups using resources in a variety of ways. Tlingit culture has traditionally been defined largely by it’s relationship to the environment. For many non-Natives in Sitka, resource harvesting is a crucial element in the adaptation of life to Alaska. The vast majority of Sitkans have appreciated in resource gathering use throughout Sitka’s history, unquote.

Sitka’s extensive use of fish and wildlife has been well documented over many years. The details stated by Division of Subsistence of the Department of Fish and Game entitled subsistence harvest and use of salmon and selected nonsalmon species, Sitka, dated July 2002 is included

with Sitka's comments, which you all have, and you also have a resolution from the City and Borough of Sitka, and several letters from the city administrator.

Sitka has continued to experience economic decline since the loss of its largest employer, Alaska Pulp Corporation, in 1993. That was 400 jobs, mine being one of them. Wage and salary employment averaged 4,278 jobs in '04 compared to 4,358 jobs in '03. Sitka's increased unemployment rate of 6.6 percent marks the third consecutive year of increase.

Sitka's access to transportation is very limited. There is virtually no road system beyond the 14 miles of road that run north to south from town. The Alaska Marine Highway System barely serves Sitka with less than one-third of the service provided to the rest of the mainland ports in Southeast Alaska. There is limited jet service, but it is costly. The only other commercial transportation service to the rest of the world is by barge, but it has become more erratic over the last few years.

As these trends continue, subsistence will become increasingly more important to Sitkans.

I would like to thank the Southeast Alaska Regional Subsistence Council for its recommendation that Sitka be removed from the list of communities to receive further determination in the rural determination process.

And as I said before those were the statements—or a summation of the statements the government relations director prepared for me today, and it's all stuff that you've heard before, and I'm sure you're going to hear it again. It's just numbers to me.

But that's not the reason why I came all the way up here on my day off. I came here to tell you about Sitka and how we are a rural community. Rural is not just a number, just like Sitka's not like anywhere else in the world. Rural is an adjective. It's a location. It's in proximity to. It's an attitude. It's a way of life. It's isolation. It's small. It's not being a city. It's being in the boondocks. There is a reason Sitka is often referred to as the rock, or Sitkatras (ph) by the kids that live there. Rural is subjective, and rural is a matter of opinion.

But right now it's your opinion that counts, and that's why I'm here. But your opinion should reflect common perception or the opinion that people who live in that community or the people that come to visit that community. If I were to ask you all today how big Seattle is, what would your answer be? A million? Maybe 2 million. I'm guessing that's what it would be, because that's what has been the answer that I've been getting from everybody else that I ask. But the truth is, is the population of Seattle is just over 500,000, but the perception of Seattle, what you see when you fly in, or when you're there, the outlying areas, the traffic, the malls, the department stores, is much different. It's a much larger place. And such is the difference between rural and urban.

We don't have a Wal-Mart in Sitka. We don't have a department store in Sitka. We don't have a 7-11. We have two and a half grocery stores. You hear earlier today two, but one of them is kind of like a little mini market. We have one fuel supplier. The white pages in our phone book has less than 25 pages. We have two coffee shops. And we don't have a new car dealership in Sitka. We have one pharmacy. We have one business supply store. The high school kids ride the bus with the junior high school kids in Sitka. We have one computer store. If you need a part for your car or your plumbing breaks after six or on a Sunday, you're just out of luck until the next day. This is just a way of life in a rural community, and this is Sitka.

As you know, I'm the mayor of Sitka, and seldom do I get a chance to speak on behalf of my community and its residents, and speak for such a large majority, if not all of them. Today is the only day of my political career when I will not offend one person in Sitka by what I say.

The opinion in Sitka to meet rural designation has superseded any consensus I've ever seen in my town. The Assembly unanimously supported this. We have a very diverse assembly representing a very diverse community, and unanimous votes are rare, and so such unity in our town.

Among other organizations that have supported this in Sitka is Sitka Tribe of Alaska, Alaska Native Brotherhood, Alaska Native Sisterhood, Shiataka (ph) Corporation, the fish and game advisory board, and the Southeast Alaska Regional Advisory Council. It's not a controversial issue, and all of Sitka is behind this.

Sitka is a rural town, and when people come to Sitka, they use words like small, little, isolated, quaint, village, community, and, yes, even rural to describe our town. They don't call Sitka a city, and neither do the people that live there.

Subsistence in our community is important. Many people feed their families on deer and fish all year long. I've been one of these families. When things were tough, we could not afford to go to the grocery store and buy our meat. We lived on subsistence. This summer we went out on my boat with three friends and set a subsistence set. This year my subsistence harvest helped feed three families. As I said earlier, being rural is not a number."

John Littlefield, Chair of the Southeast Alaska Regional Advisory Council reported the Council's recommendation, as follows:

"The Council recommends that Sitka be removed from the list of communities to receive further analysis in the rural determination process. The Council believes that Sitka's rural status and the community's dependence on subsistence are clearly established and that further analysis is not needed. The Council requests that a rural determination be held in the community to facilitate community's understanding of this issue and participation in the decision-making process.

The Council considered the following information in developing its recommendation.

- 1. Sitka was considered to be a rural place by Congress in 1860 [sic] at the passage of ANILCA. Sitka was not one of the communities, Anchorage, Juneau, Fairbanks and Ketchikan identified as an urban place.*
- 2. Sitka's census was 7,803 in 1980, above the 7,000 threshold when ANILCA was passed.*
- 3. In 1986, the Joint Board of Fish and Game determined Sitka was a rural place. The Joint Boards considered community data and public testimony at that time, and the majority membership of each Board was required to make this determination.*
- 4. Sitka continued to be a rural community by the State of Alaska when the State fell out of compliance after the State Supreme Court and the McDowell Decision. This classification was accepted by the Federal program at the inception of the Federal management of wildlife in '91 and fisheries in 2000.*

5. *Sitka's population growth has been minor from 1980 to 1990 and from 1990 to 2000. The growth was 785 people, or 10 percent during the first time period, and 247, or three percent during the second time period. That's .3 percent a year or less.*
6. *Sitka had a comprehensive household survey done by the State of Alaska, Division of Subsistence in cooperation with the Sitka Tribe of Alaska in '88 and '97. And I won't go over this, read this completely, but it certainly shows that Sitka's subsistence harvest provides a higher than average American consumption of food. In other words, we eat more food than most people normally get, and it's all 27 wild foods, and the data is stable.*
7. *Sitka residents are unified in the support of the rural classification. City and Borough resolutions and letters, Sitka Tribe of Alaska letter, Alaska Native Brotherhood and Sisterhood resolutions, State of Alaska Fish and Game Advisory Committee recommendations, and as noted by the testimony yesterday.*
8. *The non-Native Sitka grew up around the Sitka Indian town. The Sitka Native population includes member of Sheekwaakaan as well as members of other tribes who live in the area.*
9. *Sitka was the center for industrial logging at the time ANILCA was passed, and this is an economic activity continued through the mid-1990s. An industry presence in Sitka included large scale logging operations and some management activities, a major pulp mill and small timber milling operations. These industrial businesses have been closed with the loss of hundreds of well paying industrial jobs. Sitka also lost many of the Federal government jobs that managed timber harvest in the Tongass National Forest. Sitka has become more of a rural community since closure of the pulp mill and virtual elimination of logging activities staged from Sitka. Seasonal engagement with tourism has increased, particularly with the rapid post-1985 increase in cruise ship visitation in Southeast. Charter boat fishing has also increased, and both of these endeavors compliment the subsistence activities.*

For those reasons, Mr. Chair, the Board [sic] supported not adding Sitka to the list because Sitka meets the definition of rural which is a remote and isolated place."

Board member Judy Gottlieb, of the National Park Service, and on the prevailing side in the Board vote on whether to assign Sitka to staff for further analysis, stated the following:

"I appreciate everybody's comments and I certainly appreciate all the testimony and the work that's gone into this particular issue.

Sitka's population was and has been over 7,000 but from the extensive information I think we've already received, I don't believe that there's been changes other than that small, I think it's three-tenths of one percent increase per year in population. So previously this Board determined it to be rural and it sounds like the numbers, the characteristics have not changed very much in that case.

The infrastructure, as we heard has changed tremendously over the years because of the closure of the mill, cruise ships coming in, that changes the economy significantly and the price of fish have gone down quite a bit too. I think it was interesting, as was pointed out that, not only the Mayor, as well as the tribal government has come in very unified, that the whole town is very unified that it's rural in their minds per our definition or perhaps most of the definitions, and the RAC has supported this.

They have limited services. We've heard about the transportation issues and infrastructure and the road system. Also the Coast Guard Base.

I think, while it's on the list, again, because of its population, we also have the opportunity through our regulation to look at the unless clause; and I'm not sure what further information we would be collecting with further analysis and maybe we need to speak to that more specifically but I know the Mayor had already provided some density information and some information on the decline on school attendance and so on and so forth and the ferry service.

So I think with respect to Keith's guidance, geography and nature of landscape, while, people in Sitka are really fortunate by virtue of geography to have an abundance of resources, and the same could be said of the landscape that's happened to provide a great variety of resources and people have made use of it."

Board member Niles Cesar, of the Bureau of Indian Affairs, also on the prevailing side, stated the following:

"I believe that Sitka has made its case for remaining rural. I don't believe that further analysis is going to discover anything new and I maintain that—or at least it's my opinion that we don't want to get stuck in an analysis paralysis. You know, how much analysis is enough analysis, and who's going to pay for it."

The concern regarding undue further analysis speaks to the balance the Board was trying to strike between gaining needed information versus causing prolonged uncertainty, and expense, for communities in the course of the decennial review. The winnowing down of the scope of the review to the places warranting further scrutiny, as referenced earlier, was in part intended to address this balance.

A 2. Selective Use of Criteria Specified in Federal Regulation

The State claims that *"Federal regulations specify that these criteria 'shall be considered in evaluating a community's rural or nonrural status.' However, the analysis prepared by federal staff and the Board's preliminary determinations reflected in the subject proposed rule make selective use of the criteria."*

The Federal regulation on the rural determination process has three parts. Part *a* addresses making determinations, part *b* addresses the periodic review of rural determinations, and part *c* provides a reference as to where current determinations can be found. The Board, in conducting this first decennial review, has been applying the regulations pertaining to the making of determinations to the review of those determinations.

The regulatory phrase quoted by the State, from part *a*, is taken out of context. The Federal regulations specify that "[c]ommunity or area characteristics shall be considered in evaluating a community's rural or nonrural status. The characteristics may include, but are not limited to: [the list of five characteristics follows]." This regulatory construction provides substantial latitude to the Board in the type of community characteristics used to evaluate rural or nonrural status. All five of the characteristics listed in regulation were addressed with data for one or more indicators in the historical (1990) and current (2006) tables presented in appendices to the June 23, 2006 OSM report to the Board, and selected indicators were also presented in graphs for ease of visual interpretation. Characteristics were evaluated for communities using the data as available.

The State raises Old Believer communities on the Kenai Peninsula, and Delta Junction, as two examples “*where consideration of the use of fish and wildlife resources, as well as other factors, are minimized or omitted.*”

The issue raised regarding the Old Believer communities confuses the community characteristics used to address rural/nonrural status with the grouping of economically, socially, and communally integrated places, for which the Board identified three criteria as indicators. For Delta Junction, data on community characteristics were used to the extent available. Sufficient information on community use of fish and wildlife was not available in a way that would have been reliable for contributing to an assessment of rural/nonrural status.

A 3. Preliminary Board Determinations Made in Executive Session

The State claims that “*the Board’s decisions for continuing to analyze the rural status of some communities and not others*” was made in executive session on June 22, 2006.

The Board’s decisions regarding communities and areas assigned for further analysis were made in a public meeting December 6–7, 2005. At the executive session on June 22, 2006, the Board developed the proposed rule, the release of which activated an extensive public comment period, including Board hearings in four communities.

A 4. Insufficient Public Information

The State claims that “*the Board has failed to provide sufficient information and assurances of consistency regarding the basis for the Board’s evaluations of rural status or of the effects of a Board determination.*”

The Board has conducted this review of rural/nonrural determinations with substantial opportunities for public involvement, and with substantial informational outreach. The generalized timeline for the process has been previously noted. In the course of this process, there have been public news releases, a question and answer sheet, fact sheet, briefings to Regional Advisory Councils, staff reports, a proposed rule, Board public meetings, and Board public hearings in four communities.

B. Factual Concerns

The State claims that “[t]he Board needs to base its decisions on factual analyses of fish and wildlife use patterns in Alaska, wherein relationships between fish and wildlife harvest patterns and other criteria (such as sharing and redistribution along non-market networks, taxable income and regional cost of living differentials, the percentage of natives and non-natives in a community, and roads) are explored (see Wolfe 1986; Wolfe and Walker 1987).”

The method to be used by the Board in its review of rural/nonrural determinations was subjected to public comment earlier in the process. Moreover, the Board has been advised not to embark down the course advised here by the State. For example, Keith Goltz, of the Solicitor’s Office, stated the following at the December, 2005, Board public meeting:

“The State started with this program and they started with a definition which is very much like a lot of people seem to be arguing for now and that’s that they would study the landscape in historic terms, see where subsistence is taking place and then make their determination on that basis. The

precepts that the State was using were tested in the Ninth Circuit in the Kenaitze Decision, and the Ninth Circuit Court of Appeals basically said, no, you're not supposed to run your program about how people are using the landscape, you're supposed to run your program based on the nature of the landscape itself.

So that's the basis. That's the motivating impulse behind the regulations.

I don't know how useful it is to parse out to exact quantity how much these characteristics are going to influence our analysis of the numbers. I think the important thing is that the record be complete and that we not focus on subsistence uses as the basis for our decision. The basis for our decision is the geography of the land, what are the areas, how many people are in that area. The way the Ninth Circuit approached it is to say that the term rural is a word of common understanding, look at the dictionary and proceed from there. Well, we know it's not going to be quite that simple, but our focus unfortunately at this point is not on common human concerns."

B 1. Omission of Relevant or Updated Data

The State claims that “[t]he June 23, 2006, federal staff analysis fails to incorporate results of previous statewide analyses. Available comparisons of patterns and their changes between 1990 and the 2000 census, as well as subsequent changes, are not presented consistently for all communities.”

As noted previously, the June 23, 2006 OSM report is not selective in its use of population data or community characteristics, and both historical and current data are presented. Tabular appendix tables and in-text graphics present historical and current population data and indicators for all five community characteristics identified in regulation. In addition, data is presented on population density, which is a characteristic not identified in regulation. Not all data types were available for all communities and areas. Current data were presented in a standardized way for those data types for which it was available.

B 2. Aggregation of Similarly Situated Communities

The State claims that “[t]he federal staff analysis ignores the historical context for aggregation. This is a continuing issue with the Board's approach to rural designations. The Board should request that the federal staff analysis be updated to include additional information in time for the Board's December 12–13, 2006, meeting. The Board's decision making process should include an evaluation regarding small communities along road systems and their links to larger population centers with services that residents of these small communities regularly use.”

The Board considered grouping issues for some areas, as assigned for further staff analysis in December 2005. The method to be used for the assigned staff analyses was described and subjected to public comment earlier in 2005.

The majority of the detail under this subject item centers on the Kenai Peninsula. The State claims that “[t]he 2006 federal staff analysis should have evaluated the changes throughout the Kenai and should provide sufficient analysis to allow the Board to consider reinstating an aggregation of communities on the road-connected Kenai Peninsula.”

An analysis that would evaluate aggregation of the road-connected Kenai Peninsula was not proposed by the Board for assignment in July 2005, was not requested by ADF&G at the December 2005 Board public meeting at which the assignments were made, and was not assigned

by the Board. The staff analysis is consistent with the assignment made by the Board in public session.

B 3. Specific Concerns with OSM's 2006 Analysis of Communities and Areas

The State describes concerns for nine communities or areas, as are cited in brief and addressed here, relative to the June 23, 2006, OSM report.

Adak: *“The analysis needs to be expanded to evaluate subsistence use of fish and wildlife by the current population, in light of the proposed designation of rural status, rather than just relying on population size, remote location, and salmon harvest data.”*

Adak is a remote community in the Aleutian Islands which has undergone a substantial decrease in population (from more than 4,600 people in 1990 to less than 200 in 2005). The June 23, 2006, OSM report does not present per capita subsistence use information in the appendix database because such data is not available for Adak in a way that would be consistent with other places for which there are household survey data. The report section on Adak does provide some limited information on salmon harvests. However, the main point of relevance for Adak is in the category of population size.

Prudhoe Bay: *“The analysis does not address what, if any, impacts on fish and wildlife uses may result if the Board changes the rural/nonrural status of Prudhoe Bay. The analysis does not describe the result of a nonrural determination for any area that contains limited to no federal lands. The analysis also does not consider the effects of the nonrural designation on other North Slope resident’s customary and traditional uses of the Prudhoe Bay/Deadhorse area.”* The State also claims that it was inaccurate for the June 23, 2006 OSM report to state that “[h]arvest of subsistence resources has never been reported by Prudhoe Bay residents,” citing a 2001 ADF&G database.

The analysis notes that the estimate for the permanent population of Prudhoe Bay was five in 2000, two in 2005, and is now reportedly zero. With virtually, or literally, no permanent population, there are not impacts to fish and wildlife uses operative with a change in status. A nonrural determination is unrelated to whether Federal lands are present in the vicinity. Use of Federal public lands open to subsistence take by rural residents is not affected by designation of nonrural status for residents of parts of that geographic area.

State database updates since 2001 may include harvest data for reported residents of Prudhoe Bay. Because of customary and traditional use determinations, the only large mammals that could have been taken under Federal subsistence regulations by persons claiming Prudhoe Bay residency were black bear, caribou, and sheep. However, there are few to no people that are actually residents of Prudhoe Bay, at least according to the U.S. Census and the Alaska Department of Labor and Workforce Development. It might have been more correct for the OSM report to have stated that, given the doubtful residency in Prudhoe Bay, and the other characteristics and restrictions described, subsistence use of fish and wildlife is not a factor.

Kenai Area: *“The analysis for Clam Gulch describes two options—neither of which includes any information on fish and wildlife harvest levels and harvest areas.”*

The analysis for Clam Gulch was a question of whether it should continue to be grouped with the nonrural Kenai Area. That analysis was done consistent with the guidelines identified by the

Board for evaluating the grouping of communities and areas, the method for which was submitted to public comment in an earlier stage of the process.

Wasilla Area: *“Fish and wildlife data are not discussed or presented.”*

The analysis for the Wasilla Area was a question of whether some places should be grouped with the nonrural Wasilla Area. That analysis was done consistent with the guidelines identified by the Board for evaluating the grouping of communities and areas, the method for which was submitted to public comment in an earlier stage of the process.

Homer Area: *“Similar to the information presented for the Wasilla Area, the analysis is restricted and does not take into account fish and wildlife use information.”*

The analysis for the Homer Area was a question of whether some places should be grouped with the nonrural Homer Area. That analysis was done consistent with the guidelines identified by the Board for evaluating the grouping of communities and areas, the method for which was submitted to public comment in an earlier stage of the process.

Delta Junction: *“The analysis should include information on customary and traditional hunting, fishing, and trapping patterns for the region. Harvest report data for Delta Junction are available from the Statewide Big Game Harvest Database (2006) maintained by the Department.”*

Adequate information was not available on the customary and traditional hunting, fishing, and trapping for the region to allow for evaluation consistent with other areas of the state for which the staff analysis provides data.

Kodiak Area: *“The analysis does not make a convincing case to disaggregate any portion of the road system from the rest of the road-connected area.” “The analysis does not discuss Kodiak’s role as a regional center and does not mention the Department’s report on regional centers (Wolfe et al. 1986).”* A detail point is made regarding the year the Alaska Joint Board of Fisheries and Game classified Kodiak as rural.

The staff analysis laid out options for including, or not including, Chiniak in the Kodiak Area grouping, and related considerations for the Pasagshak portion of the remainder area. The Board exercised its judgment in proposing a grouping of the nearer portion of the remainder area with the City of Kodiak, and other identified places, and excluding Chiniak and the more distant portions of the road-connected remainder area.

The staff analysis provides an historical background of Kodiak Island. The central role of Kodiak City to the region is noted, as is the relationship to outlying areas and the movement of people in a later section.

The correct year being 1986, and not 1988, for the classification of Kodiak as rural by the Alaska Joint Board of Fisheries and Game is duly noted.

Ketchikan Area: *“However, in June 2006, when this federal staff analysis was completed, the results and methodology of the KIC survey should have been, but were not, available for public review.”*

The survey in question was conducted by the Ketchikan Indian Community, and report distribution was not a Federal Subsistence Board responsibility. However, a draft executive

summary of the survey was distributed by KIC and discussed on the record at the May 16, 2006, Federal Subsistence Board public meeting. Also, the final report, dated August 31, 2006, was posted to the KIC website in early September, 2006.

Sitka: *“The lack of required analysis for Sitka has been discussed in detail in the earlier parts of these comments.”*

Further staff analysis is not required. The State’s comments regarding the Board’s consideration of Sitka have been addressed previously.

C. Summary

The State claims that *“the 2006 analysis is seriously deficient because of its failure to systematically and consistently consider changes that have occurred since 1990 throughout the state and because it excludes or minimizes analysis of information on fish and wildlife uses.”*

The 2006 analysis reports on communities and areas as assigned by the Federal Subsistence Board. Standardized tables and graphs present historic and current data for population and indicators of community characteristics for communities as assigned. The use of fish and wildlife is a part of this information base, and its role in the body of information is appropriate to the Federal program approach to the decennial review of rural/nonrural determinations.