FEDERAL SUBSISTENCE BOARD
Board Meeting of May 3-6, 1999

Location of Meeting
The Egan Center
Downtown Anchorage, Alaska

Transcript of
May 5, 1999

Board Members in Attendance:

Mitch Demientieff, Chairman
Dave Allen, U.S. Fish & Wildlife Service
Warren Heisler, Bureau of Indian Affairs
Niles Cesar, Bureau of Indian Affairs
Judy Gottlieb, National Park Service
Don Ostby, U.S. Forest Service

Keith Goltz, Office of the Solicitor

Others:

Ida Hildebrand, Bureau of Land Management
Tom Eley, U.S. Fish & Wildlife Service
Tom Boyd, U.S. Fish & Wildlife Service
Sandy Rabinowitch, National Park Service
Ken Thompson, U.S. Forest Service
Peggy Fox, Bureau of Land Management
Dan O'Hara, Bristol Bay Advisory Council Chair
Vincent Tutiakoff, Kodiak-Aleutians Advisory Council Chair
Ronald Sam, Western Interior Advisory Council Acting Chair
Bill Thomas, Southeast Advisory Council Chair
Willie Goodwin, Northwest Arctic Advisory Council Chair
Fenton Rexford, North Slope Advisory Council Chair
Grace Cross, Seward Peninsula Advisory Council Chair
21 Harry Wilde, Yukon-Kuskokwim Delta Advisory Council
   Chair
22 John Andrew, Coordinator
   Elizabeth Andrews, Alaska Department of Fish & Game
23 Taylor Brelsford, U.S. Fish and Wildlife Service

24

25

PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999

1 Other Staff Members in Attendance:

2 Pat McClenahan
   Dave Fisher
3 Jerry Berg
   Donna Dewhurst
4 Barbara Armstrong
   Helen Armstrong
5 Rachel Mason
   Robert Willis
6 Cliff Edenshaw
   Helga Eakon
7 Terry Haynes
   Don Callaway

8

9

10

11

12

13
CHAIRMAN DEMIENTIEFF: Okay. We will convene the meeting of the Federal Subsistence Board. We've got a little bit of work to complete this morning in Southcentral, and that's where we're going to begin. But we do have a time specific deferral on Proposal 34 and the moose portion of Proposal 36 in
Bristol Bay, so we'll note that it is off the table.

And using the prerogative of the chairman, I'm going to go ahead and allow us to complete Southcentral before we go to Bristol Bay, and finish that proposal, and then we will begin the Kenai testimony.

For those of you who haven't already completed, and wish to testify, public testimony on these issues, the blue testimony cards are at the back table and the folks back there will make sure you get them to us.

With regard to completing our work in Southcentral, the first issue we have up is the Board policy with regard to individual C&T. And with regard to that, I'm going to call on Sandy Hamilton to make a presentation. Sandy Rabinowitch.

SANDY RABINOWITCH: Thank you.

As the Federal Board knows, there has been a regulation in place for, well, since the beginning of the program, in Section 50 CFR 100.16 of the Board regulations that allows for individual C&T, and that regulation has seen little to no use.

Since the inception of the program a year ago, a proposal was submitted for an individual C&T, and then this past year several additional proposals were submitted. The Board directed the Staff Committee to work on a policy to help deal with this. In simple terms, the Board's plowing some new ground. And what I'll do in a moment is go through that policy. I believe there have been copies at the back table for a day or two, and all the Board should have copies of this, as should all the chairmen of the Regional Advisory Councils.

What the policy allows for, just in a quick
summary, is the consistent approach in terms of how the public -- how the public can understand kind of the
rules of the road, and how the Board staff understands how they should be handled procedurally. The bottom
line is that the policy would allow for proposals from individuals to come before the Board for individuals
requesting a customary and traditional use for species in specific areas. When they come forward, as there are
several later today, or this morning, they will then be taken up on their own merits like any other individual
C&T proposal.

And with that, let me get into the policy paper. This is a one-page front and back paper labeled Proposed Federal Subsistence Board Policy. The first paragraph of the paper explains where it is in the regulations and clarifies that the Board has discretion with this policy. It also specifically points out that the regulation allows for this individual C&T determination only in National Park Service areas.

Then, in terms of the process and procedures, there's a number of numbered items and I'll walk through those just very quickly.

The first item is: In which National Park Service areas will the Board make individual determinations. And what the two paragraphs in this document lay out is that the Board will make those determinations in Park areas and Monument areas, but not Preserve areas. And making that choice is using the discretion of the Board that I mentioned originally.

The second paragraph of the document deals with who may apply for an individual C&T use determination. And the answer to that is individuals. The further answer is that, as many people know, when Congress wrote ANILCA in terms of Park Service areas, they laid over what we think of as eligibility requirements for National Park Service areas.

So in simple terms, generally speaking, fewer people have eligibility in Park Service areas than other federal public lands. And the way that
eligibility works in simple terms for these areas, for
the Parks and Monuments, is that either you need to be a
member of a resident-zoned community, and those are
listed in the federal regulations for each Park and each
Monument, or you need to hold an individual permit, and
that's often referred to as a 13.44 permit. It's at
Section 13.44 in the Park Service regulations.

PACIFIC RIM REPORTERS
Federal Subsistence Board May 5, 1999

So the point here is that it's recommended
that the Board would take requests from individuals who
have accomplished Park Service eligibility. If you had
not yet accomplished Park Service eligibility, that
would be the first step to be done, and the Board
wouldn't receive applications from people who didn't
have that under their belt.

Let me also point out, and this isn't
written down, but Don Callaway, who will present some of
the proposals for Unit 11 later, will touch on this.
The regulation speaks to individuals. When some of the
applicants this past year submitted them, they submitted
them and wrote on their applications that they wanted
individual C&T for families. What Don will explain is
how that was dealt with, and basically you'll hear him
explain how he dealt with people in the households. So
I just wanted to kind of highlight that, and he'll get
into that later.

The third paragraph on the back of the
page, how do people apply, is the issue. The answer
here is very straightforward. Just as anyone else would
apply to have a regulation changed during the period of
time, usually through the summer and into the fall,
that's announced in the Federal Register. So that will
be the open window, just the standard approach there.
The fourth issue, what criteria are used to evaluate these requests. Again, really no changes. The same eight factors that are found in the regulations, and we've had much discussion over the last few days about those eight factors.

The fifth, is there a need to modify any regulations to implement the process? The answer is yes, there's one section, and that's Section .24, actually 24(a), which lists the customary and traditional use determinations. And in that section of the regulation, if you have the paper here you see the highlighted words that would need to be added.

What this does is allows for the listing of those individuals who get a positive C&T finding. It provides for a way to record that and then make copies of that available locally in the area, with the local Park Service office, and it also specifies that the list of these individuals would be available on request of anybody who wishes to have a copy.

Sixth item, what role did the National Park Service Subsistence Resource Commissions play? The answer here is, the same that they play now. That is, that they're given the information about these, and if they have an opinion and a recommendation, that they would forward that along. And typically that will come to the Regional Advisory Council meetings, as has happened for many years now on other issues.

Seventh and last item, what role did the Regional Advisory Councils play. And the recommendation here is exactly the same role they play right now, and
that is that these would come before them. They would offer recommendation if they care to, that would come to this table, at each annual meeting just like this, and the Board makes its decision from there.

I might note that I believe it's three Regional Councils, in past years as they have heard these initial ones, have indicated varying degrees of interest, some not a very high interest, in hearing these individual requests. And so, it's -- but other Councils may want to approach it differently. I mean, that's three of the ten.

So it's envisioned that if more of these come forward in the future, that the Councils would basically again be presented with these; and if they want to hear an analysis like the Board hears and the Councils hear at their meetings, the staff would go forward. If they didn't want to hear them, they would basically say so and it would come to the table here with the Board having no recommendation from a given Regional Advisory Council. But that's at the will of the Regional Advisory Council.

And with that, I'll simply say that the Staff Committee recommends adoption of the process that I've just summarized here and is written out, and I'll now turn it back over to you, Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Okay. So we have the staff report on that and the Staff Committee recommendation. Does the Department have any comments with regard to this particular --

ELIZABETH ANDREWS: Mr. Chairman, I guess the only question we still have is that once an application is put in, what would be the time line for

PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999
putting together the information so that it would come up before the Board in the spring meeting? I guess we're interested to hear that if somebody puts in an application in the fall or something, that by the Board's spring meeting that there will be the information gathered so that there's consideration, rather than waiting several years before an individual C&T might be taken up by this Board.

CHAIRMAN DEMIENTIEFF: Yes. We will -- it will be treated like a normal proposal. And once the application has been received timely, then the Staff Committee will begin work on it and it will be treated just like a regular proposal. And that's how we will handle even consideration of this policy, we'll handle those the same way at the Board meeting.

ELIZABETH ANDREWS: Thank you very much.

CHAIRMAN DEMIENTIEFF: We have no request for public comments on this issue. Regional Council comments?

NAT GOOD: Mr. Chair.

CHAIRMAN DEMIENTIEFF: Yes.

NAT GOOD: Are these comments on the process now, or on Dan O'Conner?

CHAIRMAN DEMIENTIEFF: On the policy.

NAT GOOD: Well, I think Eastern Interior is glad to see that the policy is being put into place. We feel it's overdue and we think you're doing something very wise here.

RALPH LOHSE: Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Yes.

RALPH LOHSE: Southcentral concurs with that. It's been an issue before us for quite a while.

CHAIRMAN DEMIENTIEFF: Yes, that is the
intent of the policy, is to find some way to move
forward with implementation.

I might add there's a mixed school of
thought, you know, and I think Sandy talked about the

PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999

Regional Council participation and the fact that there
are some of the Regional Councils that don't want to
participate. But I, myself, think it's very important
for the Regional Councils, too. That's why we have the
Regional Councils, to get the local input.

So it's with a little reluctance, you know,
that I personally accept a policy without, you know --
and allow these proposals to go forward, without
Regional Council participation, because I think both the
Subsistence Resource Commissions and the Regional
Councils need to help us out, you know, with the local
participation on this. Even though we're prepared to go
forward without it, it's with a little reluctance. And
I don't think I'm the only Board member that has that
view. Ron? Oh, I'm sorry.

RONALD SAM: Thank you, Mr. Chairman. I
have one question. How much power, or how much does the
Federal Subsistence Board listen to the SRCs? Because I
would really like to see our SRCs be totally involved,
because they are SRCs for individual Parks, and I would
like to see -- I would like to know how much power that
is vested in them.

CHAIRMAN DEMIENTIEFF: With regard to this
issue --

RONALD SAM: Yes.
CHAIRMAN DEMIENTIEFF: -- you know, they're equally as important as Regional Councils. And maybe in some cases as far as bringing the really truly, you know, because the Regional Councils represent a region, you know, they're very, very important to us, because they are for the specific Parks. So it's not one without the other. I mean, you know, we do want that participation very much. That's a big part of the -- big piece of this pie. Yes?

GRACE CROSS: Mr. Chair, you expressed my sentiment very well. This is the first I've ever seen this, probably because I'm new, but it would be nice to be able to show this to my Regional Advisory Council and make comments on it. But I'm not sure what part of the game it is now in. I'm sure that my Council would be able to make comments. Thank you.

CHAIRMAN DEMIENTIEFF: Well, you know, I think it's our intent to adopt the policy at this time.

And this, you know, I don't think it's something that's cast in stone. You know, if there are recommendations that come forward from Regional Councils for revisions of the policy, I think we'd be open, you know, to those revisions. It's a beginning point for us on how to try to move forward with these individual C&T requests. Yeah, if you do have suggestions in the future, or any Regional Council does, we're going to listen to those.

WILLIE GOODWIN: Mr. Chairman. Am I correct in saying that this policy only is only for Parks and Monuments?

CHAIRMAN DEMIENTIEFF: That's correct.
WILLIE GOODWIN: The irony is, and I brought it out yesterday, is that somebody that marries into another family, for instance, from Kiana to somebody in Point Hope, 150 miles away, can't come into the Kobuk Valley National Park and hunt, even though they grew up in Kiana. That's the sad part of it.

CHAIRMAN DEMIENTIEFF: Sandy will respond to that.

SANDY RABINOWITCH: I think there would be a way. I'm not sure I can construct a scenario as well as you might, Willie. But if an individual, let's say it was a -- grew up in a resident-zoned community, for instance, and then they moved away. They certainly could apply to the Park Service superintendent for the individual permit, the 13.44 permit. And in a very simple scenario like I just said, I would imagine that would be granted. And then as long as they were still in a rural community, and the example you gave is that, then I think they could, they could go back and hunt.

WILLIE GOODWIN: Except for those that move to Anchorage and Fairbanks and Kenai and Juneau.

SANDY RABINOWITCH: Yes, you're correct. The dilemma there, and the irony there, as you correctly point out, is then they would be in an urban community and would not have eligibility to the federal program because of residence in an urban location.

WILLIE GOODWIN: Thank you.

CHAIRMAN DEMIENTIEFF: Any additional

PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999
Regional Council comment? I think we're ready to move on. Any Board comment? We're ready to proceed on with the motion to adopt the policy.

NILES CESAR: Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Yes.

NILES CESAR: I move that we adopt the proposed Federal Subsistence Board policy on individual C&Ts.

CHAIRMAN DEMIENTIEFF: There's a motion. Is there a second?

UNIDENTIFIED SPEAKER: Second.

CHAIRMAN DEMIENTIEFF: It's been moved and seconded. Additional discussion? Hearing none, all those in favor of the policy, please signify by saying "aye."

IN UNISON: Aye.

CHAIRMAN DEMIENTIEFF: Those opposed, same sign.

(No response.)

CHAIRMAN DEMIENTIEFF: Motion carries. We'll go to Proposal 25. Staff report, please.

HOLLIS TWITCHELL: Chair, Board members, Regional Council chairs, I'm Hollis Twitchell. I'm with Denali National Park. I was asked to present Proposal 25 since it's directly applicable to the Denali Park area.

Proposal 25 was submitted by Dan O'Connor, who requests an individual customary and traditional use determination for the use of moose from Denali National Park lands within wildlife management Units 20(C) and 13(E). Dan O'Connor holds a National Park Service subsistence use permit, but is unable to utilize moose on the Denali National Park lands since he resides in a rural committee which does not have a positive customary
Proposal 25 replaces a 1998 proposal, number 38, which was deferred in last year's cycle.

The intent of their recommendation was to recognize subsistence use permit holders as a group, and not have individual names listed in the regulations; and to reduce the burden of individuals having to go through duplicating processes before being allowed to practice their traditional subsistence way of life on National Park Service lands.

The Federal Subsistence Board deferred Proposal 38 in 1998 and requested a legal review of the portion of the federal regulations that relates to the Board's authority to make customary and traditional use determinations on lands administered by the National Park Service.

The Denali Subsistence Resource Commission met in August 1998 to review what actions had been taken on Proposal 38. The Commission passed a motion supporting Proposal 38 as modified by the Eastern, Western and Southcentral Regional Advisory Councils. The Commission is familiar with the Dan O'Connor family subsistence use of moose in Denali National Park and
believes that he should be granted an individual C&T use.

The Commission has also written to the Federal Subsistence Board and the Secretary of the Interior requesting that a legal review be expedited and that Proposal 38 come back before the Board at the earliest possible date.

In February, the Denali Subsistence Resource Commission again reviewed Proposal 25 for this cycle, prior to the Regional Advisory Council's meeting in February, and again passed a motion in support of Proposal 25 as it was modified by the Eastern, Western and Southcentral Regional Advisory Councils.

In going into the analysis, the information presented here was gathered through interviews with the O'Connor family, Pat O'Connor, Dan O'Connor, through documents within the Park Service's records, and also from interviews with other individuals who have firsthand knowledge of the O'Connor family's specific use in this area.

The O'Connor family has depended upon moose in Alaska as a primary source of sustenance for four generations, and have regularly and consistently hunted moose for 57 years in Units 13 and 20. Dan O'Connor's grandmother and grandfather settled in Palmer in 1940. They actively hunted moose in Units 13 and 14. Dan O'Connor's father began hunting moose in 1948 and has continued uninterrupted through 1998. Dan O'Connor's father was an eligible subsistence user for Denali National Park between 1972 and 1995 while he resided in the McKinley Village area. Dan O'Connor himself has
participated in hunting moose since he was a young child, and has actively hunted moose every year since 1971.

Dan O'Connor is an eligible subsistence user who resided in the McKinley Village area prior to moving to Healy in 1981. After establishing his own household in the Healy area, Dan was issued a subsistence use permit by the National Park Service to continue his use of subsistence resources in Denali. Moose is their primary source of sustenance since there is no caribou season open in the Healy area.

The O'Connor families have hunted, harvested and shared moose every fall season since 1940 to the present seasons, during the specific times allowed in the regulations. Fall moose hunting activities have always been a regular part of the family's activities, despite extensive regulatory changes, restrictions and closures to many of their traditional subsistence seasons and use areas. Numerous regulations, restrictions on both State and federal lands within this region have had a negative effect upon their efficiency and economy of effort and pattern of use.

To cite some examples, the Healy-Lignite Control Use Area east of Healy in Unit 20(A) is restricted to bow and arrow hunting only. The Yanert Control Use Area east of McKinley Village and the Wood River Control Use Area east of Healy are restricted to nonmotorized access only, except aircraft for hunting and transporting large animals. National Park Service regulations restrict the use of ATVs and aircraft as a means of access for subsistence wildlife harvest. The
winter seasons, with relatively easy access to moose, have nearly all been eliminated.

Despite the many regulatory changes to seasons and bag limits, access methods and means, and areas open to harvesting moose, the O'Connors have continued to maintain a recurring pattern of use within the area, using traditional means, methods and means, which are characterized by efficiency and economy of effort within the constraints of the regulatory restrictions.

The O'Connors travel to their hunting areas by foot and ORVs, to hunt moose with rifles. The O'Connors hunted primarily in Unit 13 during the early years, the 1940s, '50s and '60s. Then they shifted their primary use areas to Unit 20, and have been utilizing that area for the last 15 to 20 years. A major change occurred in 1988 when the State Board of Game passed a negative customary and traditional use determination, closing federal lands in Unit 20(C) to moose hunting for residents of the McKinley Village area and the area along the Parks Highway, Highway Mile 216 to 239.

As a result, from 1988 to the present, Dan and Pat O'Connor families were excluded from subsistence hunting moose from Denali National Park lands in Unit 20(C) and 13(E). During this period, the family was forced to travel further from their resident communities in McKinley Village and Healy to hunt on adjacent state lands under state hunting seasons.

The O'Connors use all eligible parts of the moose. Winter freezing -- excuse me. Freezing meat outdoors is done during the colder winter months and is not usually possible during the September hunt, so the meat is canned or stored in freezers to preserve it. Some portions of the moose are processed by drying and jerkying. The O'Connors use the same process learned from his parents and grandparents and is passing those skills and knowledge on to his son. The handling techniques are common both historically and during the contemporary period across the state. When weather permits, Dan brings out the nonedible portions to use as trapping bait for his winter trapping activities.
Dan O'Connor's grandparents learned their hunting skills regarding Alaska hunting in the Palmer and the Glennallen area. Dan, as a young child, accompanied his father and mother and often other relatives long before he was actually old enough to hunt himself. Dan hunted moose every year since he turned 10 years old. Dan O'Connor continues to use traditions with his family and is passing them on to his children.

Hunting, trapping and fishing are significant values upon which the O'Connor families depended.

Moose hunting is generally a family event, participated in and shared by all family members, both within and between households. They've shared in their harvest between family members and other nonfamily members who were participating in the hunt. They traditionally share their resources at annual community events, potlucks and holidays and social gatherings. They share the resources with friends and neighbors and those in need and those who assisted in the processing of the harvest.

Moose were, and still are, the O'Connor families' primary source of meat, but the family utilizes a wide variety of subsistence resources, such as caribou, sheep, bear, ptarmigan, spruce hens, hare, fish, and fur bearers such as beaver, marten, fox, wolf, lynx, and otter.

In addition to wildlife and fish resources providing substantial nutritional needs of the family, the hunting and harvest activities provide a significant social and family activity involving all members of the household. Often, multiple generations in several
17 O'Connor households participate in the fall moose hunting and processing activities together.
18 Approximately 85 percent of Dan O'Connor's meat comes from resources from hunting. Typically, wildland resources provide meals five out of seven days per week. That concludes the analysis.

CHAIRMAN DEMIENTIEFF: Thank you. Are there any written public comments?

HELGA EAKON: Yes, Mr. Chair. The program received four written comments on Proposal 25.

The Eastern Interior Regional Advisory Council would like an expedited resolution to individual customary and traditional use determinations with respect to National Park Service lands. They said that qualified subsistence users have been denied subsistence opportunity for too many years on Park lands.

The Western Interior Regional Council had the same comment, adding that they recommend that all CFR 13.44 permittees be granted a positive C&T determination for Park lands.

The Delta Advisory Committee supports the proposal.


CHAIRMAN DEMIENTIEFF: Staff Committee
The Staff Committee recommends adopting Proposal 25, with the modification that specifies the individual customary and traditional use determination applies only to Denali National Park lands within Units 20(C) and 13(E). The Eastern, Western, and Southcentral Councils recommended modifying the proposal to include broader groups of individuals, such as 13.44 permittees, residents of resident-zoned communities, and other qualified individuals.

The Staff Committee, however, felt it was premature to concur with these recommendations before the Board has evaluated and acted on these options. Accordingly, the Staff Committee evaluated the merits of Dan O'Connor's individual circumstances. The testimony and written record provided by Dan and Pat O'Connor provides adequate documentation that Dan O'Connor has customarily and traditionally harvested moose in the portions of Unit 20(C) and 13(E) at issue.

Dan O'Connor and his family have established a customary and traditional use of moose long before Dan's move from McKinley Village to the community of Healy. He should be granted an individual customary and traditional use determination to utilize subsistence moose resources from Denali National Park lands within Units 13(E) and 20(C).

CHAIRMAN DEMIENTIEFF: Thank you.
Department comments?

ELIZABETH ANDREWS: Mr. Chairman, the Staff Committee recommendation included the concerns that we
had raised in our written comments, and therefore we
support the Staff Committee recommendation.

CHAIRMAN DEMIENTIEFF: Thank you. Gloria
Stickwan, you had filled out a -- did you wish to
comment on this particular issue?

GLORIA STICKWAN: I support the families
using C&T for the area that they're proposing to use if
they can prove C&T.

CHAIRMAN DEMIENTIEFF: Is Miss Calcote
here? Will somebody advise me if she does comes in,
because she's had a request in and I've called upon her
for a couple of days. Regional Council comments?

NAT GOOD: Mr. Chairman. Eastern Interior
is going to be very glad to not see this one on an
annual basis. And we think that at the same time --
we're assuming this will be granted this year -- that we
should perhaps thank Dan O'Connor for his patience and
thank him also for his tenacity, because I don't think
without him sticking with it here we'd have gotten this
policy. So I think that we appreciate his efforts.
Thank you.

CHAIRMAN DEMIENTIEFF: Thank you.

Additional Regional Council comments? Mr. Sam.

RONALD SAM: Thank you, Mr. Chairman. We
concur with Eastern Interior. It seems like we go
through this every meeting that we have. I would like
to go back and reiterate the powers vested in individual
SRCs. I think that if they have that much power, that
they could grant them outright, National Park Service
SRCs. If they're individually vested and recognized, I
think that we should give them more power to go ahead
and grant these individual C&Ts, instead of coming
before the Federal Board. Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. Ron, you
know, the understanding that I have is that we can't
grant the authority to the SRCs. It's strictly vested
in the Board. But at least now we have a process when
an SRC is dealing with this issue, that they can advance
it to us and it's going to be a key part of our
considerations. And that's what I'm talking about. But

PACIFIC RIM REPORTERS
Federal Subsistence Board May 5, 1999

1 there's no way under existing regulation that we can
grant that authority to the SRC, but certainly we would
2 be able to advance it. Additional comment?

3 RALPH LOHSE: Mr. Chair.

4 CHAIRMAN DEMIENTIEFF: Yes.

5 RALPH LOHSE: Ralph Lohse, Southcentral.
We'd like to concur with the eloquence of the Eastern
6 Interior and the way they expressed our feelings
completely.
7

8 CHAIRMAN DEMIENTIEFF: Thank you.

9 Additional Regional Council comment? Do we have a
motion?

10 JUDY GOTTLIEB: Mr. Chairman?

11 CHAIRMAN DEMIENTIEFF: Yes.

12 JUDY GOTTLIEB: Public testimony and
written record provided by Dan O'Connor provides
adequate documentation. I move that we modify the
Southcentral, Eastern Interior and Western Interior
Regional Advisory Councils' recommendations for Proposal
25. The modification would grant an individual
customary and traditional use determination for Dan
O'Connor for moose on Denali National Park lands within
Units 20(C) and 13(E). Let me clarify. This does not
include Preserve land nor Park lands established prior
to 1980. Only those Park lands established by ANILCA in
1980.
CHAIRMAN DEMIENTIEFF: Okay. That was your motion? Now we need a second. I got lost in the filibuster. I'm sorry. Is there a second?

PEGGY FOX: I'll second.

CHAIRMAN DEMIENTIEFF: Okay. Additional discussion? Final Regional Council comment? Hearing none, all those in favor of the motion please signify by saying "aye."

IN UNISON: Aye.

CHAIRMAN DEMIENTIEFF: Those opposed, same sign.

---

PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999

1 (No response.)

2 CHAIRMAN DEMIENTIEFF: Motion carries. So 9 and 11 will be considered together; is that correct? Okay. Go ahead. Staff report?

4 DON CALLAWAY: Mr. Chairman, Board members, and Regional Advisory Council chairmen, my name is Don Callaway. I work for the National Park Service in Anchorage. I did the staff work on Proposals 9 and 11, which address the individual C&T for Frank Entsminger, Danny Grangaard, Doug Hoskens for use of sheep in Unit 11, south of Sanford River.

8 Based on these interviews and utilizing the eight factors, Danny Grangaard and Frank Entsminger indicated a high use of subsistence foods, use of a variety of wildlife resources, up to 30 species each. A large part of their diet comes from subsistence products, probably 75, 85 percent of the meat in their
They share these products widely both within the community and within family. They teach their children preservation techniques, utilize the whole animal. And both Danny Grangaard and Frank Entsminger have demonstrated a long-term consistent use, beginning in the mid 1960s, for these resources, south of the Sanford River. Whereas, Doug Hoskens, although he meets many of the eight factors, did not demonstrate such a use of the resource. He was interested, in this case, in sheep south of Sanford River.

CHAIRMAN DEMIENTIEFF: Thank you. Written public comments?

HELGA EAKON: Mr. Chair, we received three written comments of support, from the Upper Tanana Fortymile Advisory Committee, the Delta Advisory Committee, and the Wrangell-St. Elias National Park Subsistence Resource Commission. End of comments.

CHAIRMAN DEMIENTIEFF: Staff Committee recommendation?

KEN THOMPSON: The Eastern Interior and Southcentral Regional Councils recommended modifying the proposals to include broader groups of individuals, such as the 13.44 permitees, residents of resident-zoned communities, and other qualified individuals.

The Staff Committee, however, felt it was premature to concur with these recommendations before the Board had evaluated and acted on these options. Accordingly, the Staff Committee evaluated the merits of the individual applications. And the results of those evaluations lead us to recommend to the Board that it
adopt the proposal to grant an individual customary and
traditional use determination to Frank and Sue
Entsminger for goat on National Park lands in Unit 11.

Secondly, adopt the proposal to grant an
individual customary and traditional use determination
to Danny and Lance Grangaard for sheep on National Park
lands in Unit 11 south of the Sanford River, and for
goat on National Park lands in Unit 11.

And thirdly, to reject the request to grant
an individual customary and traditional use
determination to Greg Hoskens for sheep south of the
Sanford River in Unit 11.

CHAIRMAN DEMIENTIEFF: Department comments?

ELIZABETH ANDREWS: Mr. Chairman, the
Department supports the recommendation made by the Staff
Committee since our written comments were taken into
consideration, or at least our concerns were addressed
by that recommendation. So we support the individual
determination for Frank and Sue Entsminger and for Danny
and Lance Grangaard.

We do have a comment, though, on the
proposed rejection of the C&T finding for Doug Hoskens,
since it appears that that's based largely on the fact
that he didn't hunt in the area due to regulatory
constraints, and it's our understanding that such
interruptions are beyond the control of local residents
and therefore should be taken into account when
evaluating the eight factors. Thank you, Mr. Chair.

CHAIRMAN DEMIENTIEFF: Don, do you have
some response to that?

DON CALLAWAY: Yes, Mr. Chairman. The
intent of this individual C&T is to grant individual C&T
to households who have a demonstrated use prior to 1980
of the resource in the particular area they're
requesting C&T for. Both Danny and Frank's households
demonstrated prior to 1980 a long-term consistent use of
the resource in that area. Whereas, Doug Hoskens had
the opportunity, since he lived in the area for about
the same amount of time, to hunt in that area prior to 1980, but had not.

So that on Factor 1, which is a long-term consistent use of the resource, and based on the logic of the individual C&T process; that is, you have to have used the resource in the area consistently prior to 1980. So I don't believe there is a contradiction there.

CHAIRMAN DEMIENTIEFF: Thank you. Did you wish to add additional public -- okay, thank you. Regional Council comments?

NAT GOOD: Mr. Chairman?

CHAIRMAN DEMIENTIEFF: Yes.

NAT GOOD: I'll read what Eastern Interior has here. Support with modification that resident-zoned communities, 13.44 permitees, and qualifying individual families be granted positive C&T determinations for Unit 11.

When you look at this, what we were really looking at was trying to avoid some of the duplication of effort and provide a means for a family to be recognized here. I think this policy that you've just passed here has given us a method of doing that. And I'd have to also comment that we didn't have all of the materials at our meeting on the individual families, but I think at this point we certainly would support what we perceive to be the Board's action here.

CHAIRMAN DEMIENTIEFF: Thank you. Could we maybe respond. Sandy, are you prepared to respond to
the Regional Council modification, or their request for modification, with regard to 13.44 permitees?

SANDY RABINOWITCH: I'd be happy to.

CHAIRMAN DEMIENTIEFF: Would they be allowed to bring a proposal like that forward under our existing policy?

SANDY RABINOWITCH: If I understand the Council's recommendation from -- and I was at one of the meetings, I think in Minto, where this was discussed at some length. I understand that the Council wanted to take those people who had 13.44 permits, the individual permits, and essentially grant them individual C&T based on the fact that they had permits. Let me make sure I'm on the right track. Right. Okay.

My understanding -- the bottom line, as I understand it, consistent with the policy that we just put in front of you and you adopted, which is also in large part based on the legal opinion from the Regional Solicitor's Office of the regulation, is that the answer to that is we can't do that. And the simple reason is that the 13.44 permits are issued under a separate criteria, those being Park Service criteria, in Section 13.44 of the Park Service regulations, and as such are Park Service decisions. Though the Park Service is a member of the Federal Board, the Federal Board's a separate entity and has its own regulations. And so, my grasp of what we've been told by the Solicitor, they're two separate decision making processes and basically they need to be kept separate. Does that make sense?

RONALD SAM: I'll have to read through, but what you have said so far makes sense and I thank you
SANDY RABINOWITCH: Okay. I'm happy to talk with you or anyone else in the audience later, if that would help.

CHAIRMAN DEMIENTIEFF: Any additional Regional Council comments? Yes, Ralph.

RALPH LOHSE: Mr. Chair, Ralph Lohse, Southcentral. Like Eastern Interior said, we did not have this information in front of us on the individuals to pursue it. I have a couple questions on the staff analysis, if I may ask them.

One of the questions is why Frank Entsminger and his family would be found a positive C&T for goat in Unit 11 and not for sheep, when in his thing he talks about hunting sheep in Unit 11, and would like the -- he already has one?

UNIDENTIFIED SPEAKER: He has eligibility for Unit 11 already, for sheep.

RALPH LOHSE: He has eligibility in Unit 11 for sheep?

UNIDENTIFIED SPEAKER: Right, because his residence is below the C&T line.

RALPH LOHSE: Thank you.

CHAIRMAN DEMIENTIEFF: Additional Regional Council comment? If none, we'll advance to the Board.

I'm a little bit -- this is kind of a mishmash of two
proposals. I'm kind of curious how we're going to go forward here. Are we going to -- separate motions? So we're going to do 9?

JUDY GOTTLIEB: Mr. Chairman, I have two motions for Number 9.

CHAIRMAN DEMIENTIEFF: Okay.

JUDY GOTTLIEB: The first one being, I move that we modify the Southcentral and Eastern Interior Regional Advisory Council recommendations for Proposal Number 9. The modification would grant an individual customary and traditional use determination for Danny and Lance Grangaard for sheep on Wrangell-St. Elias National Park lands within Unit 11, the remainder south of the Sanford River. And again let me clarify, this would not include Preserve lands.

CHAIRMAN DEMIENTIEFF: Okay. Is there a second to that motion?

UNIDENTIFIED SPEAKER: Second.

CHAIRMAN DEMIENTIEFF: It's been moved and seconded. Is that Proposal Number 9 or 11?

JUDY GOTTLIEB: This is Number 9 for Grangaard sheep.

CHAIRMAN DEMIENTIEFF: Okay. Discussion?

Hearing none, all those in favor, please signify by saying "aye."

IN UNISON: Aye.

CHAIRMAN DEMIENTIEFF: Those opposed, same sign.

(No response.)

CHAIRMAN DEMIENTIEFF: Motion carries. Okay.
JUDY GOTTLIEB: And Mr. Chairman, I then have a second motion for Proposal Number 9. I move that we reject the request to grant an individual customary and traditional use determination to Doug Hoskens on Wrangell-St. Elias National Park lands within Unit 11, the remainder south of the Sanford River.

CHAIRMAN DEMIENTIEFF: That's the motion. Is there a second?

UNIDENTIFIED SPEAKER: Second.

CHAIRMAN DEMIENTIEFF: Discussion? Hearing none, all those in favor signify by saying "aye."

IN UNISON: Aye.

CHAIRMAN DEMIENTIEFF: Those opposed, same sign.

(No response.)

CHAIRMAN DEMIENTIEFF: Motion carries.

What about 11?

JUDY GOTTLIEB: Mr. Chairman, I have two more motions, please.

CHAIRMAN DEMIENTIEFF: Okay.

JUDY GOTTLIEB: And these involve Proposal Number 11. I move that we modify the Southcentral and Eastern Interior Regional Advisory Council recommendations for Proposal Number 11. The modification would grant an individual customary and traditional use determination for Frank and Sue Entsmlinger for goat on Wrangell-St. Elias National Park.
lands within Unit 11. Once again to clarify, this does not include Preserve lands.

CHAIRMAN DEMIENTIEFF: Is there a second to that motion?

UNIDENTIFIED SPEAKER: Second.

CHAIRMAN DEMIENTIEFF: Moved and seconded. Discussion? This is 11?

JUDY GOTTLIEB: This is 11.

CHAIRMAN DEMIENTIEFF: And the subsequent one is also 11?

JUDY GOTTLIEB: Correct.

CHAIRMAN DEMIENTIEFF: Okay. Is there any further discussion on 11-A, motion 11-A? I don't know what we call it, we never dealt with these before.

JUDY GOTTLIEB: Right.

CHAIRMAN DEMIENTIEFF: Discussion? All those in favor of the motion, please signify by saying "aye."

IN UNISON: Aye.

CHAIRMAN DEMIENTIEFF: Those opposed, same sign.

(No response.)

CHAIRMAN DEMIENTIEFF: Motion carries.
Okay.

JUDY GOTTLIEB: Mr. Chairman, 11-B, motion for Proposal Number 11. I move that we modify the Southcentral and Eastern Interior Regional Advisory Council's recommendation for Proposal Number 11. The modification would grant an individual customary and traditional use determination for Danny and Lance Grangaard for goat on Wrangell-St. Elias National Park lands within Unit 11. This does not include Preserve lands.

CHAIRMAN DEMIENTIEFF: There's a motion. Is there a second?

UNIDENTIFIED SPEAKER: Second.

CHAIRMAN DEMIENTIEFF: Discussion? Hearing none, all those in favor of the motion, please signify by saying "aye."

IN UNISON: Aye.

CHAIRMAN DEMIENTIEFF: Those opposed, same sign.

(No response.)

CHAIRMAN DEMIENTIEFF: Motion carries. Okay, that completes our work in Southcentral.

We now will move back -- what region is Bristol Bay?

UNIDENTIFIED SPEAKER: Four.
CHAIRMAN DEMIENTIEFF: Region 4, Bristol Bay. Proposal Number 36. And the moose portion of Proposal 34. Is that correct? Did I do that right?

UNIDENTIFIED SPEAKER: Yes.

CHAIRMAN DEMIENTIEFF: Okay. We've already exhausted through the staff report recommendations, heard all the comments, all the public testimony. We had a motion to adopt the Interagency Staff Committee recommendation, which failed on a 3-3 vote. We are waiting at this time for some information regarding additional field work, and Mr. Allen, I think, may have a report for us with regard to that issue.

DAVE ALLEN: Yes, Mr. Chairman. I do want to speak to the issue of additional field work, but before I do that, just very briefly I'd like to add some information that was not part of the Staff Committee's report that is an indicator of nonlocal effort in this area. Our Refuge permits all the air taxis that drop hunters off in the federal lands, the Refuge portion of federal lands. Our records from 1991 through 1997, 15 air taxis shown there have been no drop-offs of moose hunters in those years in the area that's proposed for closure.

Just last year there was an individual in Chignik. I don't know if it's Chignik or Chignik Lagoon, but the operator of Chignik Air, who was permitted by the Refuge for the first time in 1998, he did ferry four hunters last year into that area, and I also understand he probably does some contract work for some of the guides in that area as well.

Once again, this is just some additional information to indicate the fact that the use level in this area by nonlocal residents is very low, as was indicated by the harvest tag information and the other information that was shared with us yesterday.
On the issue of doing a survey, before the Board makes a decision relative to this proposal, Fish and Wildlife Service certainly can and is willing to do this. However, I think I should point out for the Board that the utility of the information that is gained by the survey, even if we do it in the next few days, may be relatively small.

If in fact the absence of snow cover in areas where moose might be becomes a factor, that of course complicates the survey. Moose should be beginning to disperse. Bulls of course have dropped their antlers at this time. Last year's calves may be separated from cows, which increases the likelihood of misclassifying some of the data. And because of all these things, the key population statistics that we would be looking for; namely, the bull-cow ratios and calf-cow ratios, it would be very difficult, if not impossible, to obtain.

In spite of this, Mr. Chairman, we are certainly willing to do this. In fact, I believe, Dan, one person that may be contacted to do this is, I believe, your son, Tom, as you indicated, may be willing to do that. But I felt that it's important that the Board know that even with this information, it may be of rather marginal value to us with respect to bringing any more pertinent information to the board. But as I said, we are certainly willing to do that at the pleasure of the Board, and we can do that very soon so that a decision could be made well in advance of the season.

CHAIRMAN DEMIENTIEFF: Mr. O'Hara, do you have additional comment with regard to that?

DAN O'HARA: Yes. Dan O'Hara, Chair, Bristol Bay. My son, Tom, works for (inaudible), so I better not make any commitments where he's going to be going. He may not have a job.
But actually, if -- I think it's possible to do a survey still within the next week or so, ten days, depending on the weather, and all we're looking for is adequate number of animals there. The bulls have fairly good size horns already, they're sticking out that far already, they're growing the horns. So at least the big ones you can tell. And there's no foliage, and they're still herded up together. I came by the other day and lying there in the community, Lake Iliamna, was seven animals in the village boundaries together. So I think that would be good.

One of the things we were thinking might take place is, occasionally you let an observer go along, Dave, to look, and if you had an extra seat for someone from the Village Council or something, so that when we say we're representing these subsistence needs, they're on board, they're looking at it, too, and they're going to see the animals there. And I think we'd all benefit by that, so -- I certainly would buy off on that if we could do that. And then, you know, make your proposal subject to the survey of those animals or do something different. Thank you, Mr. Chairman.

CHAIRMAN DEMIENTIEFF: I guess in looking, trying to look for some solution here, and I guess -- let me just toss out an idea, if we have an agreement that we can get this done in the next week to ten days, to set aside the conservation concerns. You know, what I'm suggesting is that maybe we may want to simply defer consideration of the proposal, which would leave the existing regulation on the books. And I certainly would be sensitive to, you know, Regional Council request to
bring the proposal up again, you know, pending this information if we're able to get out there in the next week or ten days. And that, you know, I think would potentially resolve the issue, pending additional biological information.

I think, as Mr. Allen pointed out, it would not be as -- you know, if the conservation concerns of the population were to be resolved, it would not be as beneficial to the local subsistence users because the interagency staff recommendation did add some time to the season. You know, and pending good biological information, we could certainly maybe deal even with that issue as a special action request, or however the Regional Council wants to do it. But pending further analysis of the biological -- of the conservation concerns, it may be at least a short-term remedy that we could deal with. And then if things did turn out, you know, the conservation concerns were there, you know, I think we would be responsive to bringing the deferral off, you know, and dealing with it, even it's a teleconference mode, fairly soon, so we can get some resolve to this issue one way or the other fairly quickly.

Mr. O'Hara, do you have any comments on that?

DAN O'HARA: That would be fine. Just go ahead and do your action according to the survey, and go from there. And if we have adequate animals, go back to your existing regulation. I don't think we have to come back again. You know, one of the things that the Councils do is, working and living in the area, we are
aware of these type of situations that exist. For instance, in the Park Service last year, they did not do a stream survey in the fall of Naknek Lake. That's very critical. That stream survey has to be done every fall. You're not going to be able to tell what's going on with the resource there if you don't do that stream survey.

So this is one of the jobs that we have. We can, as Council chairs, and as the Council represents the area, come back and ask the departments to look more closely at these issues, because we -- our first -- our first thing we do in the Bristol Bay Council, we take care of the resource, and then we take care of subsistence. Thank you very much, Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Willie, and then -- go ahead.

WILLIE GOODWIN: Thank you, Mr. Chairman. One of our proposals early on, which we pulled back, was of the same issue. Mainly because the subsistence user at home automatically notices when something is wrong, when the animals are not there. Furthermore, when the count was done -- I'm using the moose situation at Squirrel River as an example here. When the count was done, they estimated 1300 moose. That was in October. In November I flew with one of the local guys. Two airplanes went out. We counted 140 moose in the area. Granted, they migrate, we know that. But we also know where the high concentrations of the moose are at that time of the year. I mean, that's local knowledge. We know that. So we counted, and that's what we counted. Granted, we're not experts in counting, but my God, we didn't miss them by much.

The other thing I'd like to point out is that from our observations in both the Squirrel and -- because moose migrate between Noatak Preserve and Squirrel River and the Lower Kobuk areas, this spring's
calf count or ratio that the Park Service done, has indicated already that the calf production is real low. It certainly substantiates the concern that the local people had of the moose population in our area.

Now I'm a little worried about our moose. I want to take a look at that a little bit further and may pull back that proposed regulation to close it off to nonqualified subsistence user. But it's an observation that -- and it's something that we've done that I take note in his same situation there. And I'm glad that there will be a count to see what's happening out there. We went through that up there, and if the calf count is correct, then certainly the observations by our people are correct. Thank you.

CHAIRMAN DEMIENTIEFF: Yes, Mr. Allen.

DAVE ALLEN: Just a comment, Mr. Chairman. As you indicated, if we're able to address the conservation concerns through the survey and subsequently then take no action on the motion, it should be noted that the State regulations have already extended the seasons to 20 days in January. So even if we took no action, that part of our motion -- that part of the proposal, at least, would be available to local residents, irrespective of our decision here today. I'm sorry; of any decision we ultimately make on this.

CHAIRMAN DEMIENTIEFF: As I would indicate, there would be nothing to prevent, you know, a special action request to match, to align our season. And if the biology was there, and the conservation concerns were addressed, I think it would be a fairly easy matter for us to align the seasons. Niles?

NILES CESAR: Yes, Mr. Chairman. Just a process question. As I understand it, this motion failed 3-3, so we therefore have nothing before us.

CHAIRMAN DEMIENTIEFF: That's correct.
NILES CESAR: That's correct. So would it be our intent, then, to leave it as nothing before us, or make a motion to adopt something that we would later ratify, and table it?

CHAIRMAN DEMIENTIEFF: I don't really look for -- I was looking for a deferral motion, just a motion to defer.

PACIFIC RIM REPORTERS
Federal Subsistence Board May 5, 1999

NILES CESAR: But you have to have something on the table before you can defer something.

CHAIRMAN DEMIENTIEFF: Well, the proposal is still before us. The motion that failed was a motion to accept the interagency request over the Regional Council recommendation. That was the motion that failed on the 3-3 vote. Okay? So the proposal is still before us. And what I was -- procedurally, I was thinking that a motion to defer consideration of that proposal would leave it before us if the biological concerns weren't met, and allow us an easy opportunity -- the easiest opportunity to consider it.

NILES CESAR: Thank you, Mr. Chairman.

DAVE ALLEN: Mr. Chairman?

CHAIRMAN DEMIENTIEFF: Were you getting ready to make a motion?

DAVE ALLEN: Well, I don't want to bog this up, but I thought there was a second motion that we tabled yesterday, and the record would show that. Which is the Regional Advisory Council's proposal. I believe a second motion was made and seconded and we tabled it.
CHAIRMAN DEMIENTIEFF: The motion was to table the action until 8:30, the consideration of this proposal until 8:30 this morning, time specific. So we don't have a motion before us. Ralph? Yes, Ralph.

RALPH LOHSE: Mr. Chair. Dave Allen kind of answered one of my questions. One of the things that I was wondering is whether you could split your motion and at least make sure that the season was extended to January 20th. But if the State season is extended to January 20th, then they're allowed to hunt on federal lands until January 20; am I correct in assuming that?

DAVE ALLEN: Even if we take no action.

RALPH LOHSE: Even if you take no action at all.

DAVE ALLEN: Yeah.

RALPH LOHSE: Then I'd like to comment on Dan's suggestion, and I think this would be a good thing in a lot of situations, is if in some way or another -- now, I realize it's hard when you're out flying Super Cub doing counts, to have somebody else along. But it would really pay in the future if sometimes you could take an observer from the area. I think that's one of the best suggestions I've heard. Because it would help to alleviate some of the confusions and fears and things like that. I know it's hard to find people that are capable of sitting in a plane and doing moose counts, because a lot of people can't take it, but it would sure be worthwhile doing.
CHAIRMAN DEMIENTIEFF: Thank you. Yes?

DAVE ALLEN: Just in response to Ralph. We make every effort to do that, particularly when people are interested in participating. That was a key issue, as a matter of fact, with caribou, near the Izembek Lagoon, in the very southernmost end of the peninsula, and I think that went a long way, I think, to build confidence and credibility in these efforts.

Mr. Chairman, I'm prepared to make a motion, if it's appropriate to do so now.

CHAIRMAN DEMIENTIEFF: Yes.

DAVE ALLEN: Mr. Chairman.

CHAIRMAN DEMIENTIEFF: I'm sorry.

NILES CESAR: You tabled this motion. It doesn't go anywhere until you take it off the table. So somebody has to make a motion to bring it off the table.

CHAIRMAN DEMIENTIEFF: No; it was tabled time specific.

NILES CESAR: It was tabled until --

CHAIRMAN DEMIENTIEFF: No; it was tabled time specific. The motion was time specific until 8:30 this morning.

NILES CESAR: Then it's off the table, okay.

CHAIRMAN DEMIENTIEFF: At 8:30 this morning, I acknowledged that it was off the table, and
then I used the prerogative of the chair to move
consideration of the proposal until after we completed
our work in Southcentral.

NILES CESAR: And I agree with Mr. Allen.
Let's just go do something here and quit wasting
everybody's time, because we know we want to count the
animals and go on with the program.

DAVE ALLEN: Mr. Chairman, I move that we
defer the Regional Advisory Council's proposal until
such time that we have an opportunity, within hopefully
the next ten to 14 days, to gather more information by
survey with regard to the moose population in the area
proposed.

CHAIRMAN DEMIENTIEFF: We have a motion.
Is there a second?

PEGGY FOX: Second.

CHAIRMAN DEMIENTIEFF: It's been moved and
seconded. Discussion? Hearing none, all those in favor
please signify by saying "aye."

IN UNISON: Aye.

CHAIRMAN DEMIENTIEFF: Those opposed, same
sign.

(No response.)

CHAIRMAN DEMIENTIEFF: Motion carries.

At this time, the chair will entertain a
motion to adopt the consent agenda items, Proposals 3,
4, 16, 17, 18, 19, 20, 21, 26, 27, 35, 37, 38, 39, 41,
42, 50, 51, 52, 53, 54, 56, 57, 59, 60, 62, and that's
it.

JUDY GOTTLIEB: Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Yes.
JUDY GOTTLIEB: I move that we adopt the consent agenda items that you've just listed.

CHAIRMAN DEMIENTIEFF: Is there a second to the motion?

UNIDENTIFIED SPEAKER: Second.

CHAIRMAN DEMIENTIEFF: Discussion? Hearing none, all those in favor signify by saying "aye."

IN UNISON: Aye.

CHAIRMAN DEMIENTIEFF: Those opposed, same sign.

(No response.)

CHAIRMAN DEMIENTIEFF: Motion carries. Is it 9:45 already?

UNIDENTIFIED SPEAKER: Yes, it is.

CHAIRMAN DEMIENTIEFF: Okay. What we're going to do here -- procedurally, that completes our proposal consideration. What we're going to do is we're going to take a short break here, and then we're going to come back and we're going to start the Kenai rural request, public testimony. And even if we complete it this morning, we have to keep in mind that we did notice that the consideration wouldn't come up until 1:00. So if we took an hour's worth of testimony and completed all the testimony, we still couldn't deliberate the issue until 1:00 this afternoon.
So what we're going to do is come back and just begin the testimony process. If we get done prior to noon, that's fine. If not, we will come back at 1:00 and continue the testimony, at which time right after that we will begin to deliberate the request. Okay, so we'll take a short break here.

(Short recess taken.)

CHAIRMAN DEMIENTIEFF: Okay, we're going to go ahead and begin. Again, let me go over procedurally where we're at. We did send out public notice that we would begin the consideration of the Kenaitze Indian Tribe request for review of Kenai Peninsula nonrural determination.

If we complete public testimony prior to noon, we will go ahead and take a break at that time. We will come back at 1:00, because that's the time we advertised public testimony. And at 1:00, we will ask if there are any additional people that wish to testify on this issue. Once we exhaust public testimony, we will begin consideration.

Now, earlier this week we had a request from the Kenaitze Indian Tribe to break at 2:30, and which we will, in honor of that request. If we are still in public testimony at that time, at that time I'll make the decision on whether or not we come back this evening and complete public testimony. One way or the other, it's my intent to complete public testimony today. And then if we have to meet this evening, or if we get past 2:30, we may just go ahead and come back and do the deliberation on the request in the morning.
We're just going to go by ear. But if we do exhaust all public testimony this morning and there's no additional testimony, at 1:00 we will begin deliberation. So just so everybody knows what we're dealing with.

And other than that, for Board members, we do have, once we complete the deliberation on this request, we have some reports with respect to the core group, staff community who will be working with the State, and also we have a report on the Regional Advisory Councils' appointees to add to our mix of discussions with the State. Those will be more along the report nature. So once we complete the Kenaitze, we still have two little items that we'll have to take care of, but it won't take very long. So that's our kind of road map here for the day.

And with that -- we still have to do all of our reports this afternoon, don't we? Or do we need to do that report now?

UNIDENTIFIED SPEAKER: (Inaudible)

CHAIRMAN DEMIENTIEFF: Yeah. Well, this is -- we notified that. We're just going to do public testimony.

UNIDENTIFIED SPEAKER: Right now?

CHAIRMAN DEMIENTIEFF: Yeah. And we will do -- I think what we'll do is we'll do the staff report. And who is going to do that?

UNIDENTIFIED SPEAKER: Rachel.

CHAIRMAN DEMIENTIEFF: Rachel. We're just going to do the staff report, and that's part of it.
Then we'll deviate from our normal schedule and we'll go right into public testimony. We don't do the Staff Committee recommendation or anything like that. We'll just do the report. I may ask you to do a brief synopsis of the report again at 1:00 for any people who may arrive at that time. But maybe we'll just do a brief staff report right now and then we'll begin the public testimony.

RACHEL MASON: Thank you, Mr. Chairman. In 1998, the Kenaitze Indian Tribe requested that the Federal Subsistence Board reconsider its 1990 rural determinations and declare the entire Kenai Peninsula rural. As you know, rural determinations throughout the state are scheduled to be reviewed following the 2000 census, but they may be reconsidered before that time if special circumstances are recognized by the Board.

And the request states that out-of-cycle review is warranted by special circumstances in the Kenai Peninsula case. These include legal and analytical errors in the original determinations, as well as new information coming from public testimony and a report prepared by UAA's Institute of Social and Economic Research, which I'll refer to as the ISER report. At its Spring 1998 and Fall 1998 meetings, the Southcentral Regional Council voted to support the Kenaitze Tribe's request. The Regional Council also conducted public hearings on this issue on the Kenai Peninsula in November 1998, and at its March 1999 meeting reaffirmed its previous recommendations supporting the request.

The approach that's taken in the staff analysis is to examine the assertions of special circumstances in the request. First, to review the methodology that was used in the Board's 1990 rural determinations, they involved two steps: Aggregation, and categorization as rural or nonrural.

First, the criteria that were used for aggregation were whether 15 percent or more of the working people in a community commute from one community to another. Whether the two communities share a common school district. And whether daily or semi-daily
shopping trips were made from one community to another. And the intent of this aggregation was to include bedroom communities that might otherwise be considered rural in the same category with nearby communities that were more clearly nonrural.

254

PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999

1

Following aggregation, the communities were
categorized by population size. The communities with
fewer than 2,500 people were presumed rural.
Communities with a population between 2,500 and 7,000
could be either rural or nonrural. And those with 7,000
or more people were presumed nonrural. However,
population size alone was not considered an adequate
indicator of rural or nonrural status. And especially
for communities falling into the middle category,
further criteria were used to evaluate their rural
status. These included fish and wildlife use, diversity
of economy, transportation, community infrastructure,
and the level of education available in a community.

In a letter to the chair of the Southcentral Regional Council on December 9, 1998, the Native American Rights Fund, on behalf of the Kenaitze Indian Tribe, made several assertions of special circumstances apply to the Kenai Peninsula rural determinations. These assertions can be grouped into several categories: Their assertions concerning the rural determination criteria used by the Board in 1990; the Board's application of the rural determination process; new information not available in 1990; the Board's responsibility to defer to the Regional Councils; and finally, the current situation on the Kenai Peninsula. And some of the assertions fit into more than one category.
A problem in considering these is that federal regulations give no definition of special circumstances. They imply that the special circumstances in question are significant demographic changes in the communities. And so, while the Board has no regulatory guidance for evaluating assertions of special circumstances, based on new information or past legal procedural or analytical errors, in rural determinations, these factors are used to reconsider other types of Board decisions. For example, in RFRs for the Subpart D proposals, of customary and traditional determinations.

In regard to the assertions that are related to the rural determination criteria used by the Board in 1990, and these are primarily legal questions, one of the assertions is that the Board's 1990 nonrural determination for the Kenai Peninsula violated the Kenaitze decision. The issue before the Kenaitze court was a narrow one: whether the State of Alaska had properly defined the term "rural." And when the Federal Subsistence Board began to make rural determinations in 1990, it did take into consideration the Kenaitze decision. The federal process used population as the initial screen for the determinations, rather than fish and wildlife use as the State had done.

And so in deciding against the State, the Kenaitze court found deference to the State inappropriate. However, federal agencies are entitled to deference, and the Secretaries acted within their authority in adopting the rural process regulations, and these regulations are therefore entitled to deference.

Another assertion related to the rural
determination criteria is that Title VIII of ANILCA is Indian legislation and, as such, must be interpreted broadly in favor of protecting the subsistence rights of Alaska Natives.

Title VIII is racially neutral, and the purpose of the title is to consider the opportunity for subsistence uses by both Natives and non-Natives. Further, the Ninth Circuit Court stated in March 1999 that Title VIII benefits rural Alaska residents, regardless of whether they are members of tribes. And that was in Hoonah Indian Association vs. Morrison.

The next category of assertions are those that are related to the Board's application of the rural determination process. And one is that the Board treated different areas in the state inconsistently. In particular, on the Kenai Peninsula the Board aggregated communities, whereas in other parts of the state they did not. And an example given in the petitioner's assertions is that Saxman was not combined with Ketchikan. But in fact, Saxman was initially aggregated with Ketchikan in the Board's preliminary rule determination, but in the final determinations Saxman was considered rural.

More broadly, the assertion of inconsistencies also relates to the fact that Sitka, Kodiak and Saxman were granted rural status, whereas the Kenai Peninsula was not. The Board changed its initial nonrural determinations for Kodiak, Sitka and Saxman on the basis of testimony and new information that came in after the initial determinations had been made.

The Board was persuaded by testimony that

Kodiak and Sitka are isolated island communities,
unconnected by road, and there was testimony that the economies of these communities centered around commercial fishing and logging, and that the residents of these communities intensively used subsistence resources. And the Board also heard testimony that Sitka, Saxman and Kodiak were hubs of subsistence trade within their region.

In reference to Saxman, the Board was persuaded to change its determination and make Saxman rural, both by testimony and other information that Saxman was a distinct Native community separate from Ketchikan and that they relied heavily on fish and wildlife resources. No such distinctions were found for the Kenai communities that were aggregated. And on the basis of -- on the question of whether the Board erred when it changed its rural determinations for Sitka, Kodiak and Saxman, and made them rural, but let stand the Kenai Peninsula as nonrural, the only conclusion is that there was some basis in the record for the Board's decision.

Moving on to assertions related to new information that was not available in 1990, one of them is that the demographic and socioeconomic information relating to the Kenai Peninsula that is contained in the ISER report was not available at the time that the Board made its 1990 rural and nonrural decisions. Actually, the ISER report uses data from a mixture of years, from 1980 through 1996, includes some new information from the mid 1990s, such as harvest data, employment and income data from some communities that was not available in 1990. However, there's little indication that a significant change in the character of the communities being compared has occurred since 1990, nor that the demographic and socioeconomic data that were used by the Board to make the nonrural determinations in 1990 was in error.

Another assertion brought forward is that the Regional Council has received more extensive information from a larger number of Kenai Peninsula residents now than was provided in the course of public hearings during the rural determination process in 1990.

Before making those 1990 determinations,
there were some subsistence scoping meetings held on the Kenai Peninsula in the communities of Seward, Kenai and Homer. And these were in conjunction with the Environmental Impact Statement public review process. Testimony at those meetings relevant to rural determinations included comments that roaded portions of the Kenai Peninsula should not be considered rural; statements of people who perceived themselves as subsistence users although their taking occurs under sport regulation; frustration at nonrural determinations; and the statement that there should be an appeal process and periodic reevaluation of nonrural determinations.

During the December 1990 board meeting at which Sitka, Saxman and Kodiak were declared rural, there was no request to add the Kenai Peninsula communities to those considered rural. The Kenaitze Tribe submitted a request for reconsideration in February 1991, and it contained some of the same assertions that were submitted in the 1998 request.

In the summer of 1995, public hearings were conducted in communities on the Kenai Peninsula. The focus of these hearings was the proposed customary and traditional use determinations, but many of those who testified also addressed the rural determinations. And again, there were statements that the boundaries -- that the boundaries between rural and nonrural appeared arbitrary, that the federal program's definition is flawed, and many of those who testified stated that all the portions of the Kenai Peninsula on the road system should be considered nonrural.

In November 1998, public hearings were
conducted in Seward, Homer and Kenai to address the 
Kenaitze Tribe's request to make the whole Kenai 
Peninsula rural, and those who testified were asked to 
focus on special circumstances that would warrant an 
out-of-cycle review. From those opposed to the request, 
there were many of the same comments heard during the 
1995 meeting, hearings, and testifiers who supported the 
Kenaitze request told of their subsistence practices on 
the Kenai Peninsula or endorsed the request and 
resolution submitted by the petitioners.

In addition to their testimony at public 
meetings, Kenaitze tribal members brought forth 
information on their subsistence practices on the Kenai, 
both at the March 1998 and the March 1999 Southcentral 
Regional Council meetings.

Clearly, there has been much more public 
input now from the residents of the Kenai Peninsula than 
was available at the time that the Board made its rural 
determinations. However, not all of the recent public 
testimony has supported a rural determination for the 
entire Kenai Peninsula, and there's little evidence from 
the testimony that the Kenai Peninsula has a more rural 
character now than it did in 1990.

Another category of assertions refers to 
the Board's responsibility to defer to the Regional 
Councils. One statement was that the Board's initial 
rural determinations were made without input from the 
Southcentral Regional Advisory Council, which had not 
yet been established. Another is that the Regional 
Council's recommendation is entitled to deference under 
Title VIII of ANILCA.
Under ANILCA, there is a system of deference to Regional Council recommendations on matters concerning subsistence take. For matters concerning rural designations, the decision rests with the Secretary of the Interior, who has delegated that authority to the Board. And although deference to the Regional Councils on rural designations is not mandated by Section 805, the Board does rely on Regional Council advice on all matters of subsistence, and will seek Regional Council involvement in making rural determinations after the 2000 census data become available. And all of the ten Regional Councils were established after the 1990 rural determinations were made.

Finally, there are some assertions that are related to the current situation on the Kenai Peninsula. One is that the rural determinations have been divisive. And also that the time involved in waiting for the 2000 census data to be available, and for the public process to take place, is in itself a special circumstance. The members of the Kenaitze Tribe who have testified at Regional Council meetings and at public hearings have made clear that they have waited a long time for their subsistence way of life to be recognized. For example, one testifier stated that there have been disruptions in intergenerational transmission of subsistence knowledge and skills.

These two assertions, that they've been divisive and that the waiting time is itself a special circumstance, must clearly be acknowledged. Although, again, because special circumstances are not defined in ANILCA, it's not possible to determine whether the requested assertions constitute sufficient special circumstances to warrant an out-of-cycle rural
determination for all the communities on the Kenai Peninsula.

The preliminary -- on the question of whether there could be an out-of-cycle review conducted with the data that's available now, preliminary community population data that's collected in the year 2000 census will be available in late 2000 or perhaps 2001. Other demographic information collected by the census and used in the rural determination process may not be available until a year later, or more.

Presently, there are population data available for all the Kenai Peninsula communities and the areas that are counted in the 1990 census. The availability and the quality of current demographic data suggests that it would be difficult to conduct an analysis and a reassessment of the Kenai Peninsula's rural status, including a comparative analysis of Kodiak, Sitka and Saxman, without benefit of the 2000 census.

But for consistency in determinations, it is important that the same types of data are used for all communities and areas. And so, in considering special circumstances, the consequences of delay for another two or more years must be weighed against the benefits of waiting for the census data to be able to make consistent decisions during the statewide review of rural determinations.

And one more. In conclusion, the assertions about the Board's application of its own criteria for aggregation do raise questions about the use of this methodology and its application statewide. Specifically, the ISER report shows that on the Kenai Peninsula, appropriate information was lacking to apply to the three factors used to aggregate communities: commuting from work; sharing a common school district; and daily shopping trips. So it may be -- given the proximity of the availability of the 2000 census data, at this point it may be appropriate to review the Board's methodology for statewide rural determinations rather than to conduct an out-of-cycle review. Thank you.
one more thing, before we call on our first person requesting to testify. This matter has already had Regional Council testimony, per -- basically, the Board had asked that the Regional Council do it. So this is a hearing of the Federal Subsistence Board. Therefore, if there are any questions to be asked of people who are testifying, it will come from Board members only. The Regional Councils will still have the opportunity to comment, as we deliberate, when the deliberations begin. But during the public testimony, Board members only to ask any questions that they may wish to ask.

Rita Smogge is the first person signed up to testify. And also, as you begin the testifying, I ask you to be as brief as possible, but I will be flexible on that. If there are certain people who are -- who have, you know, a lot to offer. I know you have some expert witnesses lined up, attorneys and these kind of things. While I don't expect long filibusters, I will ask you to be as brief as possible. Yes, ma'am.

RITA SMOGGE: Thank you. My name is Rita Smogge, I'm the executive director for the Kenaitze Indian Tribe, and I'm also a tribal member. If I can, I would like to read a resolution from the Kenai Native association first. This is Resolution 99-05.

Whereas, the Kenai Native Association, Inc. is a local Alaskan profit corporation located at Kenai, established in accordance with the Alaska Native Claims Settlement Act in '97 -- 1971, excuse me. Public Law 92-203; and

Whereas, the Kenai Native Association, Inc.
has real and permanent concerns for the collective and individual economic and social needs of its 570 shareholders, a majority of which reside in the Kenai Peninsula Borough; and

Whereas, the Kenai -- KNA Board of Directors considers the Kenai Peninsula to be a rural area by any reasonable definitions of the term; and

Now therefore be it resolved that the Board of Directors of the Kenai Native Association fully supports and endorses Title VIII of ANILCA, which grants rural preference to the citizens of the Kenai Peninsula Borough, thereby making them eligible to practice their indigenous, customary and traditional subsistence way of life. Thank you. That's signed by Richard Segura,

PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999

1 President, and Carol A. Segura, Secretary. Thank you.

2 As I stated before, my name is Rita Smogge. I would like to urge the Federal Subsistence Board to reconsider assigning nonrural determination, to comply with Title VIII of ANILCA. Since 1975, the tribe has been asking for it to reconsider its rural/nonrural determinations. It's been a long hard battle and our people have become very weary and disillusioned with the entire process. Although the law is clearly on their side, the burden of proof continues to be placed on the tribe.

3 The rural/nonrural issue is hard to grasp for many of our elders. They don't understand why their subsistence rights were taken away because a Board somewhere classified their traditional homeland as nonrural. Did this decision arbitrarily eliminate their need to participate in traditional activities? Of
course not. Many residents, Native and non-Native alike, are heavily dependent on a subsistence way of life, and the tribe believes that there's sufficient resources to take care of all our needs.

Admittedly, the population of the Kenai-Soldotna area has increased since the discovery of oil and gas, yet the very characteristics of these towns remain rural. Employment is seasonal in nature, primarily tied to the fishing industry. Unfortunately, several of the local canneries were forced to close this past year because the fishing fleets were unable to fish their normal fishing grounds due to restrictions imposed by Fish & Game to corridors, thereby severely limiting their catch.

The entire Kenai Peninsula is sparsely populated and many areas are not served by city water or sewer. For example, the tribe's administrative headquarters is located approximately six miles from downtown Kenai and the Kenai airport. The 50-acre Native allotment parcel has no access at this time to city sewer or water. And from what we understand, the City of Kenai doesn't have plans to install these facilities for another two years. Also, wildlife, such as moose, caribou, eagles, rabbits, sandhill cranes, and sometimes bear, can be seen roaming the property. There is no mass transit system in the Kenai Peninsula Borough. And numerous federal agencies consider the Kenai Peninsula to be rural.
recommended that the communities on the Kenai Peninsula be reclassified as rural. The Board's original determination was made without regard to the fact that Title VIII of ANILCA is Indian legislation and, as such, it must be interpreted broadly in favor of protecting the subsistence rights of the Kenaitze.

And I have one last comment, and it's on the Interagency Staff Committee recommendation. The staff of the agencies have admitted that procedural errors were made in making the Kenai Peninsula nonrural determination. However, they recommend that this Board should wait until after they establish a methodology for rural determination to revisit the Kenai Peninsula determination. That is not fair to the tribe. We should be judged by the 1990 standards, like the rest of the communities in Alaska were. We have already been denied our subsistence rights guaranteed in federal law, and it is the Board's obligation to protect those rights. We should not be expected to wait another four or five years. Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. Are there any questions from Board members? Thank you very much. Carol Daniel.

CAROL DANIEL: Thank you, Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Wait a minute, he's got to -- okay.

CAROL DANIEL: Thank you, Mr. Chairman. The issue before the Board is whether special circumstances exist to warrant this Board's reconsideration of its 1991 rural determination with respect to communities on the Kenai Peninsula. Is it working?

UNIDENTIFIED SPEAKER: (Inaudible.)

CAROL DANIEL: My name is Carol Daniel and I'm an attorney. I represent the Kenaitze Indian Tribe and I've been working with the Kenaitze Indian Tribe since the mid 1980s on the rural issue. The issue before the Board today is whether special circumstances
exist to revisit the Board's 1991 nonrural
determinations with respect to the communities on the
Kenai Peninsula.

Before addressing special circumstances, I
would like to address briefly, by way of background, how
we got here. The issue came before this Board initially
as a result of a recommendation from the Southcentral
Regional Council following eight public hearings that
were held on the Kenai Peninsula in 1995, to gather
testimony on the customary and traditional use
determinations that were being considered for the Kenai
Peninsula.

After those hearings, the Advisory Council
concluded that the entire Kenai Peninsula should be
considered rural. The Councils spoke of the
divisiveness of the issue on the Kenai Peninsula, and
the mistakes that had been made in aggregating
communities in the initial process, and the importance
of hunting and fishing to the people, all residents on
the peninsula.

When the Board met the following January,
it kicked the issue back to the Regional Council, with
the suggestion that the Council would have to hold
hearings on whether or not the Kenai Peninsula nonrural
determination should be revisited. Having just held
public hearings that were very divisive on the Kenai
Peninsula, the Regional Council decided -- was
reluctant, understandably, to go back and hold hearings
so soon after they had held hearings on the customary
and traditional use determinations.

It was primarily for that reason that the
Southcentral Regional Council, at its meeting in Cordova
in February of 1996, decided to table the issue. It was at that point that the Kenaitze Indian Tribe consulted with and hired Dr. Kruse and commissioned the ISER report. And following that report, in February of 1999, the Kenaitze Indian Tribe requested that the Southcentral Regional Council bring the matter back -- to take the matter off the table and bring it back to the Regional Council. And it was -- the Regional Council agreed to do that. It heard testimony at its Glennallen meeting in March of 1996; and following that meeting, for a second time recommended to this Board that the Board revisit its 1991 nonrural determinations on the Kenai Peninsula and declare all of the communities on the peninsula rural.

The Board at that point again advised the Regional Council that it needed to hold hearings on the Kenai Peninsula and to set forth specific special circumstances justifying the Board's taking this matter up out of cycle. The Board agreed to hold the hearings. Hearings were held on the Kenai Peninsula in November of 1998; and following those hearings, the Board again -- I mean the Regional Council again recommended to this Board that it revisit the 1991 rural determinations based on special circumstances.

The special circumstances that I would like to highlight are, first of all, the Regional Council recommendation itself. The original determination was made without input from the Regional Advisory Council. Since then, the Council has three times recommended that the Board revisit this issue. The first time in 1995; again in 1998 following public testimony, in consideration of the 1998 ISER report; and finally, most recently, following hearings on the Kenai Peninsula, the
Regional Advisory Council recommended at its March 1999 meeting that the Board find special circumstances to reconsider the nonrural determinations on the Kenai Peninsula.

These recommendations were not made in a vacuum. They were made after numerous hearings on the Kenai Peninsula and after much public input. The recommendations to classify the Kenai Peninsula as rural is supported by substantial evidence, and the Regional Council's recommendation is due deference. But the Board doesn't even have to reach that issue today. The issue is whether special circumstances exist, and the recommendation from the Regional Council is that they do.

With all due respect to the staff report, which suggests that deference to the Regional Council recommendation is not required in this situation unless it deals with subsistence take, I would submit that they cite no authority for that proposition. And furthermore, the Board had this issue before it in 1995 and deferred the issue, or submitted the issue back to the Regional Council, Advisory Council on two occasions since 1995, suggesting that the Regional Council hold hearings. If that process was -- if the Regional Council's recommendation is not required, then why defer the decision for three years following the time that it initially came before the Board?

In any event, we would suggest that the recommendation of the Regional Advisory Council does deal with subsistence take in the most fundamental way. It involves the total denial of the subsistence opportunity to people who live on the Kenai Peninsula to engage in any subsistence take.
In terms of the Board's initial determination, we still submit that it was based primarily on the State's nonrural determinations which were expressly rejected by the Kenaitze case -- by the Ninth Circuit in the Kenaitze case. The temporary subsistence management regulations for public lands in Alaska were published in June of 1990, and at that point the Board simply adopted the State's rural, old rural/nonrural determinations.

The Board was then given a period, a very short period, until the end of the year, to adopt its own designation for rural and nonrural designations in the state. As the staff report acknowledged, this process had to be expedited in order to quickly establish the federal program. In fact, the hearings that were held on the Kenai Peninsula only -- did not focus on the rural/nonrural issue. It was a scope -- there were scoping hearings that focused on the proposed -- the Environmental Impact Statement. So it covered all the issues for the federal program.

In the rush to establish that program, it's apparent that what the Board did was it did not make its decision in accordance with the Kenaitze case. While the Board acknowledges that the term "rural" refers to areas that are sparsely populated, it went on to deny any application of population density. And the only way it used population, total population of communities, was not as an initial screen, but to indicate or to establish a presumption. In other words, if the community had a population of less than 2,500, it was presumed to be rural; and if it had a population in excess of 7,000, it was presumed to be nonrural.

But those presumptions proved meaningless when communities were then -- were aggregated prior to applying any kind of population screening. By aggregating the communities on the Kenai Peninsula in terms of criteria that the staff has conceded there was no information, no reliable information, on which to make those decisions, every community -- or almost every
community on the Kenai Peninsula was denied the right to the subsistence priority. Even though no community on the Kenai Peninsula in 1991 had a population in excess of 7,000 people. In fact, there were some communities as small as 200 people, or less, that were aggregated with larger communities and then denied the rural priority.

So population was not used as an initial screening device. It proved to be meaningless when communities were aggregated. The staff’s response to this argument is simply that the federal agency is entitled to deference in its interpretation of rural. I would submit that that deference does not apply in this case since the agency chose to ignore the direction given by the Court of Appeals in the Kenaitze case.

Deference is due only when the agency interpretation is reasonable. In this case, its conclusion with respect to the Kenai Peninsula communities was not reasonable and did not comport with -- was not supported by the facts. It's obvious that in determining the factor -- in using the factors to determine whether communities that had been aggregated was not whether they were sparsely populated, but how they scored on a list of indicators, which for all practical purposes were the same as the ones the State used, which the Ninth Circuit Court of Appeals invalidated as being inconsistent with Title VIII of ANILCA.

Turning to the Title VIII itself, we still contend that the Board's original determination was made without reference to the fact that Title VIII is Indian legislation. Now, the staff report points to a recent case, Hoonah vs. -- Hoonah Indian Association vs. Morrison, which is a recent case that held that Title VIII is not Indian law. That case is directly contrary
to a previous case that held that Title VIII is Indian
law. So it's incorrect to say that there's precedent in
the Ninth Circuit that invalidates that proposition.
There's also precedent in the Ninth Circuit that
supports that proposition. And the plaintiffs in the
Hoonah case are petitioning the Ninth Circuit for
rehearing on that issue.

But that aside, the fact remains that Title
VIII of ANILCA was remedial legislation. It was passed
for the benefit of Native and non-Native subsistence
users, and Congress intended the statute to benefit

those subsistence users, and the statute should be
interpreted broadly to accomplish Congress's intent in
passing Title VIII of ANILCA.

It certainly is entitled to as broad a
reading as it has gotten in other federal programs. The
Kenai Peninsula is rural for just about every federal
program available to rural communities, from everything
from fire protection, economic development, housing,
rural utilities, and weatherization funds. So Title
VIII of ANILCA should be at least given that broad an
interpretation, since it was Congress's intent to allow
Native and non-Native subsistence users in Alaska to
choose whether or not to continue their subsistence
lifestyle.

In terms of new information, the staff
report points out that the ISER report provided new
information that was not available at the time the
initial determinations were made. And in addition,
there has clearly been more input from the public since
the initial determination. A number of hearings have
been held on the Kenai Peninsula, in 1995 and again this
past fall.

Now, the staff points to the fact that this testimony -- it discounts a lot of the testimony by saying that there were many who testified that did not support a nonrural -- I mean a rural designation for the Kenai Peninsula. But I think the Board needs to remember that this isn't a popularity contest. This has always been a contentious issue on the Kenai Peninsula. It has been since 1978, and it will be after the year 2000 census information becomes available. It's not a popularity contest as to how many people testify they don't like rural, they don't agree with the Title VIII of ANILCA, they think federal management will be devastating to the communities on the Kenai Peninsula. That's not the issue. The issue is whether the communities on the Kenai Peninsula were treated the same as communities in the rest of the state, and whether they met the criteria that the Board used in determining rural and nonrural when it made its determination in 1991.

Finally, there were errors that were made in the original analysis that affected the way the communities were aggregated for the Board's rural/nonrural determinations in 1991. The Staff Committee acknowledges there were inconsistencies, not only in the way the communities were aggregated, but also in the way the socioeconomic characteristics were applied in making those determinations.

The communities on the Kenai Peninsula were treated differently. I don't think that anybody here can say that they weren't. And to deny those communities the subsistence opportunity for another two
or three years is a serious problem. I mean, it's a denial of their rights under federal law, it's a denial of equal protection, and due process. And for what reason? There are only three that are given in terms of delaying or deferring the Board's reconsideration of its 1991 determinations.

One is basically for the convenience of the Board. The fact that it would be inconvenient to reconsider those determinations now. But inconvenience or reluctance -- the other reason is reluctance for the fact that it's a controversial issue. But reluctance for political reasons or bureaucratic inconvenience are not valid reasons to deny a remedy to the Kenaitze Indian Tribe, who are entitled to the same benefits under federal law as the rest of the subsistence users in this state.

The Kenaitze -- the remedy is not to say that you have to wait, two, three, four more years, before you'll get the benefits of federal law. This Board has the responsibility to correct its errors and to treat the communities on the Kenai Peninsula as it did similarly situated communities in Sitka, Kodiak and Saxman, for example. The Kenaitze and others who live on the Kenai Peninsula should not be denied those rights under federal law for another three or four years.

Now, that doesn't mean that the Board cannot at the same time reevaluate the criteria that it used to make its 1991 rural determinations. We strongly agree that that needs -- that's an issue that needs to be revisited. But that's a separate issue. You don't have to defer reconsideration of mistakes that were made in 1990 in setting up a new methodology that will be used after the 2000 census. That's something that can be taken up simultaneously and considered at the same time.

Everyone agrees that there were inconsistencies in the methodology used to aggregate the communities, and inconsistencies in applying the
socioeconomic characteristics. The Kenaitze have already waited nine years to see this corrected, and there's just no excuse to delay this matter for another three or four years. It needs to be dealt with now.

In terms of waiting for the latest figures, I would submit that the ISER report used the latest demographic and socioeconomic information that was available in all of those categories. And as the Subsistence Staff Committee report suggests, there was not a lot of difference between the information in 1990 and the information that's available now. So I think the Board has an obligation to use the information that's available, the best available information, or the information that was available in 1990, and to reassess how it applied the rural/nonrural designations on the Kenai Peninsula.

I guess in conclusion, I know this is a difficult issue for the Board. It's always been a difficult issue when it's come up before the State Board, and it's been difficult for the Regional Council, Advisory Council. But we have to put the politics and the controversial aspect of this aside and look at Title VIII of ANILCA and what's required. The Kenai Peninsula, if it's viewed in any reasonable fashion, is a rural place. The largest communities are comparable to those of Sitka or Kodiak, and the smaller communities are comparable to smaller communities all over this state, on the road system and off. Special circumstances exist, and fundamental fairness should guide the Board's decision on this. It's not a remedy to ask people to live with the mistakes that were made in 1991 until new methodology or new information is available from the census. Thank you, Mr. Chairman.

CHAIRMABN DEMIENTIEFF: Thank you. Are there any questions from Board members? Sandy.

SANDY RABINOWITCH: About midway through
your testimony you made reference to a case from the Ninth Circuit that suggests that ANILCA is Indian legislation. Can you either cite that or look it up and write it down?

CAROL DANIEL: It's cited in our letter to --

SANDY RABINOWITCH: Okay.

CAROL DANIEL: -- the Board. It's the Gambell case, Native village of Gambell.

SANDY RABINOWITCH: Okay.

CAROL DANIEL: And I can provide you with the full cite after, after my testimony.

SANDY RABINOWITCH: Okay, thank you.

CHAIRMAN DEMIENTIEFF: Any other questions? Dave.

DAVE ALLEN: Yes, Mr. Chairman. Carol, during your testimony you several times made the point that it's been identified that there may be some inconsistencies in the way the original decisions were made. And these inconsistencies did not just impact the Kenai, but they potentially impacted decisions that affected other communities as well. Is that an accurate characterization of what you said?

CAROL DANIEL: That could be. We are asking for a reconsideration of the communities on the Kenai Peninsula, and I have not looked at how those
criteria were applied to other parts of the state. The ISER report made comparisons between communities that were similarly situated, and concluded that the Kenai communities were treated differently.

DAVE ALLEN: And I realize that that is your proposal here, but I would just ask your opinion anyway, given the fact that, you know, it's been pointed out that there may be several inconsistencies in the way that those decisions were made. Would you care to venture an opinion as to the appropriateness of the Board, if it were to decide to accept this as an out-of-cycle process, should we look beyond the Kenai in the application of those previous decisions? In order to be consistent.

CAROL DANIEL: My opinion -- I guess my opinion on that is that the Kenaitze are the only -- they're the ones that have brought the issue to the Board, and that is what the Board has to deal with in this instance. And since the statewide review is coming up and nobody else has brought an issue before the Board, making the same claim, that I'm not convinced that the Board has to undergo a statewide review of all the communities under the 1990 standards.

I think that the federal regulations provide a process for people to come to the Board and ask that decisions that were made in 1991 be reconsidered based on special circumstances. And I think one of the special circumstances would be that the Kenaitze have been petitioning this Board, in support of the Southcentral Regional Advisory Council's determination in 1995, that mistakes were made and the Board should revisit those determinations made on the
Kenai Peninsula. So I guess, no, I don't think you have to address it statewide.

DAVE ALLEN: Okay. My point wasn't statewide. It was, again, those communities that were pointed out as comparison, but I assume your answer would be the same?

CAROL DANIEL: Yes.

DAVE ALLEN: Okay, thank you.

CHAIRMAN DEMIENTIEFF: Any other questions? Thank you very much. Lare Aschenbrenner.

LARE ASCHENBRENNER: Carol covered all of the issues excellently. I just have one additional thing I'd like to comment on, and I just would like to say that we want to ask this Board to focus on the dissenting report of Fish and Wildlife. The very fact that there is a dissenting report is significant because they're infrequent. The dissenting report in essence says it all. It says the 1990 determinations are seriously flawed and must be reconsidered. It says, no delay for 13 years or more, quote, merely because of, for bureaucratic convenience, unquote.

It says, no denial of subsistence for another three or four years, not one or two. Let's get these -- the time line straight. It's going to be at least two and a half, or three or four. And the dissenting report says, no continued denial of equal protection for the Kenaitze for another four years. Right now, and for the last nine years, they've been treated differently than similarly situated communities. In other words, those other communities have priority subsistence rights, and they don't. And the dissenting report says that's a violation of equal protection. And it is.
1 The very march that you graciously are
recessing for this afternoon, the whole purpose of it is
2 to protest the failure to implement ANILCA. That is the
primary purpose of the march, for the past nine years.
3 This is a golden opportunity for this Federal Board to
demonstrate its difference between the Alaska
4 Legislature and take a small but significant step in the
right direction. No more delay of ANILCA. Thank you.

5 CHAIRMAN DEMIENTIEFF: Thank you, Lare.
6 Are there any questions of Mr. Aschenbrenner? Thank you
very much. Mary Lou Bottorff.

7 MARY LOU BOTTORFF: For the record, it is
8 Bottorff.
9 CHAIRMAN DEMIENTIEFF: I promise to use my
glasses when I look at these from now on.

10 MARY LOU BOTTORFF: My name is Mary Lou
11 Bottorff, I'm a Kenaitze tribal member. I spoke at the
last testimony, and today I'm introducing my
12 granddaughter to speak, Nicole Harmon. I have not
raised her since she was 2, but she's been in and out of
my care since then. And I would like to have her speak
to the Board. Thank you.

14 NICOLE HARMON: Hi, my name is Nicole
15 Harmon. I'm 13 years old and I've lived on subsistence
food all my life. I know what types of greens and
16 berries to pick and what seasons to pick them in and how
to prepare them. I know the difference between male and
17 female fish. I know how to cut them with an ulu. And
18 I've cut traditional foods for the Circumpolar
19 Conference held in Nome three years ago. The foods
20 consisted of cooked walrus meat; walrus oogruk, which is
21 the hide and blubber. Also, I dry and smoke fish of all
types for my consumption. My grandmother, Mary Lou
20 Bottorff, has taken me in all seasons to teach me what
types of foods is available in those times. At my house
21 in Soldotna I have my own personal freezer in which I
keep traditional foods that my cousin Jacqueline and I
like to eat. Every once in a while after school, I go
to my freezer to eat things like fish and muktuk.

When I get older and have kids, I will pass
on my knowledge about subsistence. I will teach them
how to do things in a subsistence way. I would like my
children to grow up without having to worry about people
taking their freedom to be who they are. I think that

PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999

no one should have taken away the subsistence rights.
If you'd please listen to what the Native people have to
say about this, then you will get a real answer. Please
consider what I said about rural subsistence. Thank you
very much for having me here today.

CHAIRMAN DEMIENTIEFF: And I thank you.
Are there any questions? Thank you very much. Okay, we
have a request for two people to testify together.
Bernadine Atchison and Jacqueline Comeaux.

BERNADINE ATCHISON: Thank you for inviting
me to testify today. My name is Bernadine Atchison, a
Dena'ina of the Kenai Peninsula and a Kenaitze tribal
member. I want to go on record stating that no one
person, entity or organization has my permission or the
right to represent me without my prior knowledge or
consent. I am testifying on the special circumstances
for subsistence on the Kenai Peninsula. Taken into
consideration of the rest of Alaska as the choice is
made for this area will have an impact on all Alaskan
indigenous people.

The issue of subsistence is more than
determining if we are urban or rural. It is a human
right. Special circumstances. That means different
from others, unique, exceptional and extraordinary. A
fact or an event. Conditions surrounding and affecting
a person. Subsistence is unique and an exceptional
circumstance to the indigenous people of Alaska and has
been ever since the beginning of time. For the last 200
years, subsistence has been a mechanism to control and
dominate the well-being of the indigenous people. Today
the Alaska Natives have the highest disease, poverty,
unemployment, welfare, mental health, alcoholism and
suicides than any other ethnic group in the United
States.

However, our health, mental and spiritual
well-being, is the result of our genetics. We know that
subsistence is essential to our existence. The special
circumstance is 200 years is long enough. Subsistence
is not a political issue. It is not whether we are
urban or rural, nor is it something to be viewed as a
financial gain for select groups. Subsistence is the
right to exist. It is an inherent right.

The rights are protected by laws, treaties,
proclamations, and the Constitution of Alaska, which
reads in Article 12, Section 12: The state of Alaska

PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999

and its people forever -- which means eternity --
disclaim all right or title in or to any property,
including fishing rights, the right or title to which
made be held by or for any Indian, Eskimo or Aleut.

The special circumstances are the
insensitive regulations that are put in place that
undermine the laws and restricts our rights to customary
and traditional uses to sustain life.

Providing food for sustenance requires
health of our environment. Ten years after the
devastating Exxon oil spill, water life, plant life and mammals have not recovered, and may not in my lifetime, if ever. In the Cook Inlet, there are less belugas returning each year because of the extraordinary decrease in the salmon, due to the impact caused by oil spills, factory-trawlers and environmental pollution.

The special circumstance is subsistence users protect the environment. We consider the effect it will have on those who are not born yet and those -- and that is the next seven generations.

I want to go on record that my basic sacred fundamental human rights are not negotiable. I am proud today to introduce my daughter, Jacqueline Comeaux, a Dena'ina and a Kenaitze member. It is by her request that she is speaking and addressing this board today. Thank you.

JACQUELINE COMEAUX: Hello. My name is Jacqueline Comeaux. I started fishing when I was a baby. My mom took some pictures of me, and we were fishing with a net on Cook Inlet beach. That was ten years ago. I do not waste any of the subsistence food or the berries and plants we pick. I do -- I do it to gather food for my family and for their health and for the cold winter months. I have learned how to respect the earth and all the living plants and animals. Subsistence is represented on the flag of the Kenaitze Nation. Mountains symbolize the strength and endurance and steadfastness of the Kenaitze people. The splashing salmon depicts their spirit. The river means forever. And the snowshoes portray the fact that -- the snowshoes portray the fact that our people continue to walk with assurity on our earth. This is how I feel about subsistence. Thank you for your time.

CHAIRMAN DEMIENTIEFF: Thank you both very

PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999
much. Helene Hartfield, maybe. I'm sorry.

HELENE HATFIELD: Hello. My name is Helene Hartfield. I am a lifelong resident of Kenai. For generation after generation my family is from Kenai. I have been raised and lived on fish all my life.

There are things that have stayed the same on the Kenai Peninsula that continue to be rural. Of these aspects in the Kenai Peninsula are work in the area is very seasonal. Many people can only work during the summer, with commercial and sports fishing jobs or tourism jobs. Unemployment takes a large leap every fall and begins to taper off again in the spring when jobs start to open up. People travel long distance to work, some to the North Slope, and they are gone anywhere from two to four, sometimes six weeks at a time. Some drive two to three hours round trip every day, five days a week, to get to these jobs.

Some people who want a higher education, like myself, have to go to other parts of the states. Some even have to move away for maybe four to six years. My husband went to Fairbanks to get a job logging when we were done logging on Montague Island. And we logged there for 12 years. He was killed in a car accident. And I wanted to be a registered nurse. I loved nursing, and been in it all my life. And being the sole support of my child, my two children, I dismissed the option of becoming an RN, because it took me three to four years and I'd have to leave home to do it. So I took the option and took the nurse's assistance training instead. So I had to come to Anchorage, leave my kids for five and a half months, come to Anchorage. And I put in 800 hours, 40 hours a week, for five months, through snow slides, rain or shine. In Alaska, you name it, we got it. Because I know my kids didn't want me to be away that long, and I didn't want to be away from my family either.

The Kenai Peninsula receives several grants in the district, as well as Homer Electric Association, HUD housing, which is one of the requirements being in a
rural area. The grants have traditionally been awarded
to organizations and agencies as well as small
businesses, block grants and HUD subsidies, just to name
a few.

As a Native person, our family has relied
on fish and game for survival for generations. It is a

PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999

1 part of my ancestry that I want to pass on to my future
generation as well. I sincerely hope this information
2 is helpful in your decision to having the Kenai
Peninsula considered rural once and for all. Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. Any
questions? Thank you. Amanda Sonju.

AMANDA SONJU: Hello, my name is Amanda
Sonju. I've lived on the Kenai Peninsula for three
years. Where I live is on a road connected to Soldotna.
It's 18 miles long. I live in a 12 by 14 white wall
tent with no running water, no electricity, no phone.
And in the springtime during breakup, we have to walk in
for a month. In last summer, I have seen a brown -- a
grizzly, brown bear, and a black bear. I'm from
Nondalton, which is a Dena'ina village across the inlet.
Moving to the Kenai Peninsula has made me feel that I am
closer to my own people.

I have lived in Anchorage and I'm not a
city person, so it was kind of hard for me. So moving
down to Kenai was -- it was a blessing because it made
me feel like I'm connected back to my people and living
in the rural way. Since I have been working with the
tribe, I have been working with the youth on the Kenai
Peninsula, Native and non-Native. We run a summer camp,
fish camp. And it fills me up with pride to see our
youth go through the whole process of going from fishing
the net, picking it, cutting it, brining it, and finally
16 hanging it. I feel that our youth should not have to --
17 we should not have to have a permit to do this, but it
18 should be there for them, to be able to do something
like that. I've always lived a subsistence life, and I
19 feel like if we don't do it now, that some of it will be
gone, so please consider our request. Thank you.
20
21 CHAIRMAN DEMIENTIEFF: Thank you. Any
22 questions? Thank you very much. James Showalter.

23 JAMES SHOWALTER: Good morning. My name is
24 James Showalter. I'm Kenaitze chairman and a tribal
25 member. I've got a resolution from the Tribal Council.
26 It's Resolution Number 98-38. It's a tribal resolution
27 in strong support of the Kenai Peninsula Borough being
designated as a rural area for purposes of subsistence.
28
29 Whereas, the Kenaitze Indian Tribe IRA is a
30 federally recognized tribal government, reorganized
31 under the statutes of the Indian Reorganization Act of

32

PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999

1 1934, as amended for Alaska in 1936, and in accordance
2 with the (inaudible) and the tribal constitution. It is
3 responsible for the social welfare of its 1,009 tribal
4 members and 2,767 Alaska Native residents in upper
5 central, southcentral Kenai Peninsula; and

6 Whereas, the Kenaitze Indian Tribe IRA has
7 established a long-term goal which relates to the
8 collective and individual social, economical and
government concerns of its people; and

9 Whereas, the Kenaitze Indian Tribe IRA, the
10 natural spirits of its land and its resources, since
11 time immemorial, have respected and depended upon the
Whereas, the Kenai Peninsula is a rural area by a reasonable definition of the term, which is demonstrated by the following factors, among others:

One. Seasonal employment, such as commercial and construction. And the lack of jobs and opportunity, thus creating a high degree of unemployment.

Two. Many sparsely settled communities on the Kenai Peninsula are isolated from each other and many people in these communities have no close neighbors.

Three. Many of the citizens living on the Kenai Peninsula have depended upon the subsistence way of life for generations, surviving on the abundant wildlife resources for food for their families.

Four. The communities in the Kenai Peninsula Borough, aside from the cities of Kenai and Soldotna, are not connected by sewer and water systems, and must rely on well and septic tanks.

Five. The citizens of the Kenai Peninsula must rely on the medical facilities located in Anchorage and the Lower 48 states for most specialized medical care.

Six. There is no public transportation system within the Kenai Peninsula Borough, thus making it difficult for the elderly and many of the low income
families to commute to shopping areas and medical facilities.

Six (sic). Many federal and State funding agencies, such as Alaska Village Initiative, the U.S. Department of Agriculture, consider the Kenai Peninsula a rural area, thus providing funds for projects such as agriculture, economic development, training assistance, and other projects to improve the well-being of the rural Alaskan communities.

Whereas, it is the conviction of the Executive Committee, Tribal Council of the Kenaitze Indian Tribe IRA, that the preservation of fostering the traditional subsistence lifestyle for its members and all Alaska Natives residing within the Kenai Peninsula Borough is a primary means of promoting, protecting its vital heritage of Dena'ina, Athabaskan, whose ancestors settled along the shores of the Cook Inlet basin and its tributaries.

Whereas, special circumstances which exist justify reconsideration of the Board's rural/nonrural determination as follows:

One. The Board's initial rural/nonrural determination with respect to the Kenai Peninsula was made without any input from the Regional Advisory Council, which had not yet been established.

The Board's initial determinations were based primarily on the State's nonrural determination of the Kenai Peninsula, which the Ninth Circuit Court of Appeals flatly rejected in the Kenaitze case vs. Alaska, on the grounds that it violated the definition of rural in ANILCA. The Board determination is in violation of the ethical mandatory law and it is a special circumstance justifying reconsideration at this time.

Two. During the 1995 public hearings on customary and traditional use determination on the Kenai Peninsula conducted by the Board as well as the Regional Advisory Council, a majority of local residents testified agreed that the Board's 1991 rural/nonrural determination was divisive, erroneous, and should be
reconsidered. See script of the 1995 Kenai hearing.  
24 The testimonies taken during the public hearing, in addition to providing new and relevant information, also indicates that errors were made in the analysis and affecting the ways the communities were aggregated.

PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999

1 Three. The demographics of other
2 information relating to the Kenai Peninsula contained in the report of the Institute of Social and Economic
3 Research was not available at the time the Board made its 1991 rural/nonrural determination. The report provides compelling -- it is not consistent evidence, that the Board's 1991 nonrural determination with respect to the Kenai Peninsula violated the Board's own criteria for the rural/nonrural determination, as well as the Ninth Circuit Court of Appeals Kenaitze decision.

4 Four. The Council recommends recommendation to the Board in and of itself continues its special circumstances justifying reconsideration of the Board's nonrural determination. The Board is obligated to defend the Council's recommendation, except in the limited circumstances described in Subsection 50 -- or, excuse me, 805-C. Here no justification exists in rejecting the Regional Advisory Council recommendation.

12 Now therefore be it resolved by the Executive Committee, Tribal Council of the Kenaitze
13 Indian Tribe IRA, that the Kenaitze Indian Tribe IRA fully supports and endorses Title VIII of ANILCA, which grants rural preference to the citizens of the Kenai Peninsula, therefore making them eligible to practice their indigenous, customary and traditional subsistence way of life.
And I've got one written up here for myself. On rural. We, the Kenaitze, have been to court on rural meanings. In 1989, we, the Kenaitze, have won the issue on rural in the Ninth Circuit court, which is an order from the high court, and yet the State is still saying no to rural. And now, and since then, the Federal Subsistence Board is ruling by the State's word. This action is in violation of ANILCA, Title VIII. And of the federal court's decision, which the Kenaitze has won, and you're still making a ruling by the State's thinking. Don't you think it's about time that you looked at what the Ninth Circuit court said back in 1989 and say that the area is rural? Now you want to put this off until after the year 2000 census, which in turn would have information that remains on the 2000 census until years later. So why don't you just go by what the high court said and just do it? That's the word of the Ninth Circuit court. They said it way back in 1989.

PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999

1 Special circumstances. The Regional Advisory Council has twice recommended the Kenai Peninsula to be rural. In 1995 and 1998. After the hearings on customary and traditional use by Kenaitze Tribe members, and by report from the Institute of Social and Economic Research. So since the Regional Council has recommended twice in the past that the peninsula be rural, so the Council should stand by their word and support, which they did, the meaning of rural on the peninsula. To get the numbers the State would like by aggregating communities on the Kenai is unreal and it's not right. On the Kenai is a vast area. Just the city limits of Kenai. It's large, scattered, and not like other large cities. So the research that was done aggregated all the rural cities together to get a
large number for a nonrural determination, but look at the vast areas of wilderness and wilderness wildlife areas on the peninsula.

And for being classified rural, it's also a big plus for the Kenai. The rural cities of Kenai do receive large amounts of federal dollars because they are classified as rural. To name a few, the Rural Fire Protection Area; Rural Development Program; Economic Development Recovery Program; Resources, Conservation and Development Program; Rural Department Loans Program; Rural Utilities, and there's much more that rural dollars go to the Kenai.

And in closing, the Federal Subsistence Board must look at what the Ninth Circuit court has said, and that the Kenai is rural because of Title VIII of ANILCA. So you must do what the law is and just do it. Make the Kenai rural. Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. Any questions? Thank you very much.

UNIDENTIFIED SPEAKER: I've got one here, written one. Do you want it to be submitted?

CHAIRMAN DEMIENTIEFF: Helga or Rachel can get that. That's written testimony from --

UNIDENTIFIED SPEAKER: Yes, from an individual.

CHAIRMAN DEMIENTIEFF: Could we get that copied and distributed. We need to do that probably during the lunch hour, I would imagine, so we can have

PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999
LIZ DALTON: My name is Liz Dalton. I'm here to support the Kenaitze Indian Tribe and would like to ask the Board to consider classifying the entire Kenai Peninsula as rural before the year 2000. I do believe that there are special circumstances that are here to back up the special circumstances. A lot of them are already listed. The programs that claim rural and the agencies that get grants and services.

I've lived in Alaska all my life and grew up in a subsistence lifestyle, and that's the way I would like to teach my children. And as it is right now, I have -- I can take them to one fish camp a year, through the Kenaitze Indian Tribe, where they can learn to process, and they have one moose subsistence hunt, and that's the extent of what my kids know of subsistence. I really want to support the tribe on their -- I want to support them in being here on classifying the Kenai Peninsula as rural. Thank you.

CHAIRMAN DEMIENTIEFF: Thank you very much. Any questions? Thank you. Archie Minkler.

ARCHIE MINKLER: Hello, I'm Archie Minkler. I grew up in Kenai with my grandparents. My grandfather was always hunting and fishing or gathering some sort of plants and berries. Basically, my whole childhood and development has been nothing but harvesting of the land. The last couple of years it's been harder and harder to harvest anything. The reason being all the rules and regulations that the State has put on the different animals and locations where we used to go gather our food. I hunt and fish not just for myself but my whole family and friends. I also give some of my catch to the not so fortunate people that I do know. We share everything in my family, as does the tribe.

Here on the peninsula there are many families and elders that have nobody to provide for them. I hear people say, well, just go buy some food. Well, if you're not working, how are you going to pay for it? Especially on the peninsula, now with all the different things being cut, there's a lot of people losing their jobs from the oil field, and also all the

it available to us at 1:00. Thank you. Liz Dalton.
24 canneries being shut down.

25 If you look at some of our elders, they love the traditional foods because it tastes good, and

282 PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999

1 somebody cared enough to go and harvest it for them. Each year gets rougher and rougher with the new laws that are passed. For example, the moose hunt, they have to be a certain size or over a certain size in order to bag them, and you're only restricted to certain locations where you can go get them at. With hundreds of other people also in that same area. It's almost like we have to tranquilize those moose and go out there with our tape measure to make sure that they're the right size. I hunt every year, and I'm lucky if I can get one out of every six to seven years.

2 You know, it's a lot different if you live on the peninsula. It's like the State don't want to acknowledge the people that do live there year-round and provide the community with their hard-earned money. It seems the State is more interested in the out-of-state people. Even with the subsistence now, you're only allowed so much each year. These families are not rich. They depend on the subsistence harvest. There are families on the peninsula that I do know that don't have electricity or running water. If they cannot afford these basic essentials, how can they afford food? I guess what I'm trying to say is that we really need subsistence for the people that do live here year-round. And if you don't believe me, just come on down and look at some of the families and tell me how they're supposed to support their families and supply them with enough nutritional food if you cut off their supply.

3 I do have my own well and my own leach field, and I'm about six and a half miles from downtown
Kenai. And I did at one point in time catch a live trap, with Ted Spraker from the Department of Fish & Game down there in Kenai at the tribal headquarters, a good-sized brown bear sow and three cubs. You know, I guess my biggest fear is knowing that our kids aren't going to be able to do a lot of the different things that I was able to do with my grandparents. I used to go hunting and fishing with them all the time. And I do work with some of the kids down there, doing educational fisheries and educational moose hunts, and a lot of these kids have never even seen it or done it. What I'm afraid of, if a natural disaster ever does happen, how are they going to know to take care of themselves and to harvest the land. Thank you.


PACIFIC RIM REPORTERS
Federal Subsistence Board May 5, 1999

ARTHUR MOONIN: Hello, my name is Arthur Moonin. I'm 21 years old. I lived in Port Graham up until I was 12. I moved up to Kenai and I've lived on the Kenai Peninsula my whole life. To tell you the truth, Palmer is as far north as I've gone. Never went down south past Nanwalek. I've done commercial fishing. I have not yet hunted. Hopefully, if things go through here, I'll be looking forward to going with Archie to get me a moose.

I've also seen what taking away some things from people can do to tribes, or whatever you want to call it. And sometimes it's good, it's for a good cause, but then it turns out to be something that leads to misfortune. And people get upset, yeah, but -- the people I've been with have been raised on Native foods. And the game that's around here, or on the peninsula, is
what they're raised on. I really don't care for Native foods, it kind of tastes funny to me. But I'd love to give my mom, my grandparents, family, any kind of food they want. They all like moose, porcupine, fish, seal, sea lion. But from what I understand, it would be very, very difficult to do it. It would almost be like owning a black market -- or going to a black market, just to get the stuff. I know that you think that you're trying to help out, but have you thought about the consequences of people losing their traditions and lifestyles that they've kept with their families for hundreds and hundreds of years? That's about all I have to say, and thank you for giving me your time and listening to me.

Thank you.

CHAIRMAN DEMIENTIEFF: Thank you, any questions? Thank you very much. Geneva Marinkovski.

GENEVA MARINKOVSKI: My name is Geneva Marinkovski, employed by Kenaitze Indian Tribe IRA, Kenai, Alaska. On behalf of my family and the Kenaitze Indian Tribe, I urge you to reconsider nonrural determination and make clear that the entire Kenai Peninsula be rural.

I was born and raised in the village of Selawik, where I was taught to live subsistence lifestyle. My folks, Andrew and Vera Skin, taught me traditional values of Inupiaq subsistence lifestyle. In 1982, I moved to the Kenai Peninsula to raise my own family, where I continue my subsistence lifestyle with the help from my sister and brother-in-law.

Up to this day I live on a rural setting, where the moose roam around my backyard, and eagle nest
within 100 feet of our home. And also, to this day, I live on a gravel road and rely on well and septic for water and sewer. If Kenai Peninsula is considered nonrural, then we would not be able to get funds to provide socioeconomic work for our tribe or local entities. On behalf of my family, respectfully, the Kenaitze Indian Tribe IRA, and as resident of Kenai Peninsula, I urge you to reconsider the Kenai Peninsula be rural. In addition, I'm also supporting the "We The People" by marching this afternoon in support of the subsistence rights. Thank you.


MARY ANN MILLS: My name is Mary Ann Mills. I am Dena’ina Aleut from the Kenai Peninsula and I am a tribal member of the Kenaitze Indian Tribe, and among one of many indigenous peoples whose homeland is Alaska. The subsistence issue is of great concern to the people of the Kenai Peninsula, in part because of a sneaky maneuver called "rural preference." This concerns all Alaska Natives because if subsistence can be taken from our people, it can be taken from the rest of the indigenous peoples of Alaska.

The Kenai Peninsula is referred to as the testing ground for subsistence for the state of Alaska. The subsistence issue can and should be remedied by basing our resolve in honesty and in truth, and in accordance with inherent rights, laws, constitutions, conventions, tribunals, and sacred trusts assumed by the State, federal and universal entities, and anyone else who chooses to speak on our behalf.

I would like to request this of the following concerns be included on special circumstances for consideration. The indigenous peoples of Alaska have been very good hosts and hostesses of most guests who have come into our land. It is our culture to care and share with others, and it is our culture to respect everyone and everything in our existence. Before the United States and before the state of Alaska, our land was pristine, our waters were clean, and our fish and wildlife was plentiful.
The biggest deception of the U.S. Government was when they announced to the American people and the world they purchased Alaska from Russia. It is a well documented fact, Russia never claimed ownership of Alaska. Verification of this is found in the Kozlizof memorandum and further documented in the 58th Congress, Second Session, Document 162, Alaska Boundaries Tribunal Proceedings of Alaska Boundaries Tribunal Convened at London.

What the U.S. purchased from Russia was the right to trade with the Indian, Eskimo and Aleut peoples. After the Jewish Holocaust of World War II, the United States and other countries formed the United Nations in an effort to provide world peace and to prevent other Holocausts or genocide from occurring. Their guidelines are found in the U.N. Charter, which includes the convention of the prevention and the punishment of the crime of genocide. The United States took upon themselves the sacred trust over Alaska and its peoples, as defined in the U.N. Charter, Chapter 73, which states that our peoples were to be brought to the full measure of our own self-governance. In an unprecedented move, the U.S. not only allowed military servicemen to vote for statehood, but paid them money as well. Those who were not allowed to vote were those who could not speak English, most of whom were Alaska Natives.

As a preexisting condition for statehood, Alaska had to accept into its constitution a disclaimer clause, Article 12, Section 12, of the State Constitution, which states that the state of Alaska and its people forever disclaim all rights and titles to property, which includes hunting and fishing rights of Indian, Aleut and Eskimo peoples. Forever is infinite,
Other special circumstances is the fact that the indigenous peoples of Alaska has never relinquished, or have any treaties or any other arrangements, formal or otherwise, with Imperial Russia, the Russian-American country, or the United States, in which our people conveyed, ceded, impaired, or otherwise relinquished or encumbered or restricted our freedom, our liberty, or our inherent rights to our homeland.

In 1971, the U.S. signed into law the Alaska Native Claims Settlement Act. This was accomplished without the consent or ratification of our peoples. ANCSA is a product of greed that has created dire -- crisis of dire proportion. When Congress passed the Alaska Native Claims Settlement Act, it committed to keep subsistence options open to future generations of Alaska Natives. The Conference Committee report for the act states that, quote, all Native interests in subsistence can and will be protected by the Secretary of Interior through exercise of his existing withdrawal authority. The Conference Committee expects both the Secretary and the State to take action necessary to protect the subsistence needs of the Natives. End of quote.

ANILCA was accomplished by the United States with input from our corporate leaders, without the consent of our peoples. In testimony on H.R. 39, Byron Mallott, representing AFN, stated, quote, frankly, the major reason we have researched the Native-only subsistence system is that while our lawyers feel certain that Congress has the power to create a Native subsistence system which will withstand all attacks on
constitutional grounds, they are concerned that if a broader subsistence system which includes non-Native is established, it may be struck down as an unconstitutional exercise of power. End of quote.

The advice given to AFN by their lawyers went unheeded, and 50,000 Alaska Natives AFN claimed to represent was given no voice in their affairs. In the congressional record of November 12th, 1980, H-10545, the manager of the House of Representatives on the matter of ANILCA, Mr. Udall, stated, quote, I am particularly proud of the subsistence language in the bill because it fully reflects the commitment that was made to the Alaska Native people at the beginning of the 95th Congress. At that time we promised that any law would recognize the importance of subsistence and would contain management provisions which recognize the responsibility of the federal government to protect the opportunity from generations to generations, so that the Alaska Natives now engaged in subsistence uses, their descendants and their descendants' descendants, will determine for their own cultural orientation and at a rate and degree of evolution, if any, of their Alaska Native culture.

Mr. Udall also pointed out, although there are many non-Natives living a subsistence way of life in rural Alaska, which may be an important national value, the subsistence title would not be included in the bill if non-Native subsistence provisions are included, in recognition of ongoing responsibility of Congress to protect the opportunity for continued subsistence uses in Alaska by the Alaska Native people, and responsibility consistent with our well-recognized constitutional authority to manage Indian affairs. End
This special circumstance portrays the fiduciary responsibility of the United States with regards to the indigenous peoples of Alaska. For thousands of years our people have lived in balance with our environment, understanding Creator has put his spirit into all life. Subsistence to the Dena'ina is very sacred. It isn't about money, control, greed, or rural preference. We believe our earth mother is a living being and we are here to respect her by establishing a management plan that includes seven generations into our future. To the Dena'ina, the plants, animals, fish, water and earth are our relations and are literally who we are. They have been a part of our genetics since before memory.

It is a proven medical fact that when we are deprived of our traditional food, we become sick. Today our ethnic group has among one of the highest disease rates in the nation, and is comparable to that of Third World countries. It is important to point out that all indigenous peoples of Alaska inherited subsistence from their Creator who placed us here, and from our ancestors who reserve these sacred rights for their future generations. The Dena'ina intend to pass these sacred rights on to our future generations.

I would like to go on record stating that, as one of Alaska's indigenous peoples, I have never relinquished any of my inherent rights, nor do I give anyone permission to give or compromise away any of my rights. I stand firm and would like to go on record that basic sacred, fundamental human rights are not negotiable. Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. Are there any questions? Thank you very much. I'd like to ask --

MARY ANN MILLS: I have a copy for you.

CHAIRMAN DEMIENTIEFF: That's fine. Allan Balkwin. I'm not sure -- is that right? I'm not calling him up at this time. Nina Demidoff, Eva Lorenzo. Are there any of you that can't come back this
afternoon? It's lunchtime now and I'm wanting to break. Is there anybody that can't come back, of those three? Let me just tell you what we're going to do this afternoon. We have a certain process that we go through, and what I did is kind of, I just jumped ahead to get in additional public testimony time because we had the time. This afternoon we will summarize written comments. The letter that was passed out by Mr. Showalter will be read into the record. Then we'll have the Staff Committee recommendation, Department of Fish & Game comments, and then we will resume public testimony after that process. So at this time we will go ahead and break for lunch until 1:00.

(Lunch recess from 12:00 to 1:00 p.m.)

CHAIRMAN DEMIENTIEFF: We'll reconvene the meeting of the Federal Subsistence Board. At this time we are going to go into our -- continue on with our procedure for addressing proposals. And with that, we've already had the staff report. It looks like most everybody was here that heard that report, so we're not going to go into that again. It is on the record. At this time we will move on with written public comments.

HELGA EAKON: Mr. Chairman, members of the Board. For the record, my name is Helga Eakon, and I am the Regional Council Coordinator for Southcentral. Regarding the public hearings that were held in November of 1998, they were chaired by the vice-chair of the Council, Fred John, Jr., and our hearing officer was Bill Knauer. And they both asked the members of the public to focus on are there special circumstances. With that in mind, I shan't belabor the testimony on the
larger issue of rural and nonrural. I'm going to focus on the special circumstances testimony.

At the November 9, 1998 public hearing at Seward, there were 15 people in attendance, with four testifying, and none of the four spoke to special circumstances. They just opposed the Kenaitze request. At the November 11 hearing in Homer, at which 25 people signed in, of whom 13 testified, six of the 13 opposed the request, and the only one who spoke to special circumstances was deputy commissioner of the Alaska Department of Fish & Game, who said that the Department does not see any special circumstances for the Board to reconsider its determinations out of cycle. And he urged the Board to wait until the 2000 census information was available. Of the seven testifiers who supported the Kenaitze request, none spoke directly to the issue of special circumstances.

At the Kenai public hearing, at which a total of 81 people signed in, with 27 testifying, the 17 testifiers who opposed the request did not mention special circumstances. Of the eight who supported the Kenaitze request, only one spoke to special circumstances, and that was the Kenaitze Indian Tribe, who submitted a resolution outlining the special circumstances. And those were already read into the record by Mr. Showalter when he testified before noontime, so I shant go into that.

Regarding written public comments during the period of October 9 through December 10, 1998, the Southcentral Regional Council received 57 written comments. Of these, 38 were in opposition to the Kenaitze Indian request, and 17 were supportive. Of
those who opposed the request, the Alaska Department of Fish & Game wrote and said -- they put down in writing that they did not see any special circumstances, and it was again said the Board should wait for the 2000 census data. And the Cooper Landing Fish & Game Advisory Committee expressed the same concern. Those who wrote in support of the request, the Copper River Native Association supported the request, citing the Ninth Circuit Court of Appeals Kenaitze case, that the Kenai areas is a rural place and the decision should be considered a special circumstance.

The Kenaitze Indian Tribe once again read their Resolution 98-38 into the record, and as did the Native American Rights Fund. And they added a fifth special circumstance; namely, that Title VIII is Indian legislation and, as such, must be interpreted broadly in favor of protecting the subsistence rights of Alaska natives.

The Southcentral Regional Council held a public meeting in March 1998, and of the people who testified, there were 18, and they were all in favor of the Kenaitze request. One in particular was Mr. Emil Dolchok, and you did receive his letter which I will read into the record as your chair asked me to do after I do the summary. And his concern was that local Natives who have lived here all their lives have every right to harvest early run king salmon. In fact, they should have a prior right to the taking of these king salmon at any time during the summer months when they are running. Recognize the year-round residents as a priority in harvesting these king salmon when they first enter the Cook Inlet. And he said that right now the local residents do not have access to the king salmon,
and this lack of access is a special circumstance.

The Kenaitze Tribe reread their Resolution 98-38 into the record, and someone testified that the Kenaitze case is a special circumstance. And there were several residents who had lived in rural areas and testified that they lost their subsistence rights when they moved to the Kenai Peninsula. And someone else -- and that was the attorney for the tribe, said these in the 1995 customary and traditional use public hearings provided more information than the Board had when it made its initial determinations. Special circumstances are more than just a sudden population change.

And for the members of the public that are here, there are booklets containing the letters of public comment on the table over there, as well as a table that summarizes those public comments. And that concludes -- oh. After the Regional Council meeting, our Office of Subsistence Management did receive three letters in support of the Kenaitze Indian Tribe request. The first came from the Alaska Inter-tribal Council, signed by Mike Williams, chair. And he wrote to support the tribe's request that the Board revisit its earlier determination that the Kenai Peninsula is not rural.

The second letter is dated March 31, 1991, and it came from the Native American Rights Fund, signed by Heather Kendall-Miller, and she again listed five special circumstances. And I believe that previous testimony today did capture all of her fine points, so I shant reread those.

And finally there was a letter from the Rural Alaska Community Action Program, signed by Jeanine Kennedy, executive director, addressed to Mr. Demientieff. And she said that she thought it was very important for the Board to reconsider the 1991 rural determinations for the Kenai Peninsula. And you have the letter there in your packet, so I shant go into detail on that. And that summarizes public comment to date, Mr. Chair.

Did you want me to read this? Okay. This is a letter from an elder of the Kenaitze Indian Tribe,
Emil Dolchok.  This is dated May 1, 1999. My name is Emil Dolchok. I was born and raised in Kenai, and I would like to remind this Board that our subsistence lifestyle up until the sport fishermen arrived and took over the Kenai River was very, very real. We would set our family net out at the mouth of the Kenai River around the middle of April and catch a few king salmon for the smokehouse. We would salt the heads, sun-dry the backbone, and smoke the rest. And believe me, I still do live a subsistence lifestyle. Just because there is a paved highway connecting us to the rest of the outlying communities should not and will not stop me from living the subsistence lifestyle I have been raised in. This very lifestyle that had been handed down to me and firmly sealed within my mind and body by my loving and caring parents.

I have witnessed since the sport fishermen moved into the Kenai area their greedy, heartless methods in lobbying the Board of Fisheries and the Department of Fish & Game, in eventually cutting us off completely from harvesting the early run king salmon, which was our main food supply that we smoked, salted and dried for winter. Sure, they do let us fish for personal use, but not until half the summer is over, around the end of June month, when the early run king salmon have gone by and the late run king salmon have not started to show up yet. These very early run king salmon that we Natives prized and cherished for our subsistence through the winter is being completely monopolized by the greedy sport fishing guides for the mostly nonresident sport fishermen.

I have written letters to the governor, the Legislature, the Board of Fisheries, and the Department of Fish & Game. I guess a person has to be wealthy to
be wine and dine the personnel of the Board of Fisheries to turn their heads towards the needs of the lifelong
year-round Native residents who want and need these early run king salmon for our subsistence lifestyle.
That is why I urge this Board to reconsider the Kenai Peninsula rural area. We are not living among skyscrapers or underground commuters or in the hustle and bustle which goes on in urban areas. We are in a rural area, and there is no way anyone can dispute that. This Kenai Peninsula area is rural, rural, rural. I can go to bed at night and not be bothered by never-ending noisy traffic or the hustle and bustle of the never-ending commuter traffic.

I live about four miles from the village of Kenai, the very little village I've loved and cherished all my life. My old house still stands near the banks at the mouth of the Kenai River, next to the Old Russian Orthodox Church and the St. Nicholas Chapel where my great-grandfather is buried beneath. My old home is now a coffee shop, but still setting around its rural surroundings. Sure, I live in a modern dwelling, two bedrooms, with electricity, running water and indoor plumbing, and I am not on city water and sewer. I have my own deep well and septic system. My home is located on the banks of Beaver Creek, upstream one mile from the Kenai River. The ice has gone out and the ducks have arrived. A pair of mallard ducks and a pair of cranes nest across the creek from our house every year. Kings, reds, silvers and pink salmon all are in this creek throughout the summer months. Beaver, otter, muskrat, mink all use this waterway in the summer. Coyote, weasel, black and brown bear have all wandered by our house since we moved here in 1979. This wildlife is only visible in the rural areas. Proof positive that
the Kenai Peninsula has always been rural.

Now I urge this Board to please reconsider this Kenai Peninsula area as rural. Please give us lifelong Kenai Natives our subsistence lifestyle back. Constitutionally, we have every right to harvest these king salmon that our Creator placed on this earth for the residents of this area for our family to survive on. Thank you. You know, by using good judgment you will in some strange way be very gratefully rewarded.

Respectfully, Emil Dolchok, lifelong Kenai resident.

CHAIRMAN DEMIENTIEFF: Thank you, Helga.

Staff Committee recommendation?

TOM BOYD: Mr. Chair. The Staff Committee finds that sufficient information has been provided by the petitioners and the Regional Advisory Council to suggest that there were inconsistencies in the methods used to aggregate communities and the application of socioeconomic characteristics in making the 1990 rural/nonrural determinations for the communities on the Kenai Peninsula, and the communities of Saxman, Kodiak and Sitka.

Given the serious questions posed by the petitioners and the Council, the Staff Committee recommends a review be conducted of the methodology used in these earlier rural determinations, that revisions to this methodology be made where appropriate in view of the questions raised by this petition, and that the methodology be clearly documented prior to the next round of rural determinations following receipt of the year 2000 census data.

The Staff Committee also finds that a
revised methodology for rural determination should be applied for all communities statewide, and that this new assessment be done following receipt of, again, the 2000 census data.

The focus of the Committee's finding on the assertions pointing to the inconsistencies in aggregation and the application of the socioeconomic characteristics for these communities. Although the testimony and information provided to the Board during its 1990 deliberation provided a basis for the Board determinations, the comparative analysis between the Kenai communities and Kodiak, Sitka and Saxman provided by the ISER report suggested that earlier analysis provided to the Board in support of their determinations was problematic. The other assertions listed by the Council and the petitioner were not found persuasive by the Staff Committee for the reasons presented in the staff analysis.

Let me just recap there for a second. I think where the Staff Committee is focusing is on the assertions of inconsistencies in the treatment of the Kenai nonrural communities with the communities of Sitka, Saxman and Kodiak in the 1990 determinations.

Another concern discussed by the Staff Committee was that the administrative record and supporting documentation on these initial Board decisions is sketchy and difficult to follow, and not up to the standards of thoroughness that would be applied if these decisions were made today. I think during our review, we were reminded that many of the earlier decisions of the Board in establishing the Federal Subsistence Program were expedited in order to make this program functional in a hurry. And while we could not conclude that wrong decisions were made, the incompleteness of our analytical record, taken together with the more rigorous ISER analysis provided by the Kenaitze petition, caused concern.

Another difficulty faced by the Staff Committee in reviewing this petition is the lack of
guidance in the regulations regarding special circumstances. One could logically conclude that this provision was inserted into the regulations to cover significant shifts in demographics of a community that lead to a change in its rural or nonrural status.

I think the example that's been articulated is Adak, which resulted in a significant shift in demographics when the military base was closed and the people, many of the people left that area. Currently, that area is determined to be nonrural, or urban, if you will, under the current Board determinations. However, if you looked at it today, one may argue otherwise.

Lacking such guidance, it seems also appropriate that we also be guided by the criteria applied in reconsidering other Board determinations. These criteria include whether new information has been provided that might lead to a change in a previous Board decision, or whether it was demonstrated that the Board erred in its original decision as a result of the information provided or the procedures used. In applying these guidelines to the Kenaitze Tribe's request, we have concluded that new information does exist and, if reevaluated, could lead to changes in the determinations.

In summary, the Staff Committee finds that both the Kenaitze Tribe and the Regional Advisory Council requests raise serious questions regarding the Board's original rural determinations. These questions revolve around the application of factors used in the aggregation of the communities on the Kenai Peninsula, as well as the consistency of application factors between the Kenai communities and other communities outside the Kenai Peninsula; namely, Kodiak, Saxman and Sitka. The appearance of inconsistent treatment between communities gave us cause for this concern. That left us
wondering the best way to proceed.

And in short, we felt, first of all, that a review of the methodology was warranted. And given the short time remaining until the decennial census and the time it would take to develop and gain consensus on a new rural process and then conduct a new analysis, and, moreover, to go through the rule making process, it seems more prudent to us that we would use this intervening time to review and revise the process, and that a new process could then apply to the 2000 census data in the normal cycle of reviewing rural determination. For consistency in determinations, we felt that it was important that the same types of census data are used for all communities or areas.

I think our main concern in this was that we provide the Board a credible effort. And given the timing of where we're at, just prior to the year 2000, we felt that we needed the time to develop the methodology first and then apply it, and it just seemed to make more sense not to go backwards with the '90 effort, but to go forward with the 2000 data.

I'll just conclude by saying that we struggled with this, as a staff and an interagency committee. Obviously, we weren't all in agreement. And while the majority of the committee favored the view I've just explained, there was a dissenting view as well. And I'll just read that to you.

To deny review of the Federal Board's rural/nonrural determinations for the Kenai Peninsula before the 2000 census is furthering the violation of the Equal Protection rights of the Kenaitze Tribe. The
questions raised by the Tribe and the Southcentral Regional Advisory Council regarding the aggregation and the methods used by the Federal Board clearly show that they have been treated differently than other communities in Alaska. To further deny that review until after the year 2000 census is also to deny their due process. In addition, the Board is failing to provide the subsistence opportunity that the Board is mandated by ANILCA to provide. The Board has denied this priority to them for nine years and, if the decision is left in abeyance until after the 2000 census, for 13 or more years, merely for bureaucratic convenience. Finally, the Regional Advisory Council has recommended that the Board make this review and find the Kenai Peninsula rural.

A new methodology does not have to be made for the Kenai analysis or review. The Board merely has to review using the criteria or standard used in 1991 for all communities. Then apply the 1991 standard to the Kenai Peninsula.

The concern regarding the creating of a clear methodology for the year 2000 review of all communities in Alaska is a separate and different issue. The Kenai question and their treatment is based on a standard used in 1991, not the standard that will be applied after the 2000 census. That concludes our recommendation, Mr. Chair.

CHAIRMAN DEMIENIEFF: Thank you.

Department comments?

ELIZABETH ANDREWS: Thank you, Mr. Chairman. Appreciate the opportunity to comment on this again.
Previously, the State of Alaska has commented on this request, both in oral testimony by the Deputy Commissioner of Fish & Game, Rob Bosworth, on November 11th, 1999 -- I mean 1998, at the Southcentral Council hearings in Homer, and in a letter from Commissioner Frank Rue to the Southcentral Council, dated December 9th, 1998. And I'd like to incorporate those comments just by reference to them. They're included in your packet that has been handed out to the public, as well as yourself, that's titled Kenai Peninsula Rural Determinations: Review of Special Circumstances, May 5-6, 1999.

I'll just, in our testimony today, just summarize what our comments are. First, at this time we do not see that there are any special circumstances justifying review of the current rural and nonrural designations on the Kenai. We're not aware of any new information creating special circumstances or of information not available to the federal program when it made its 1991 designations. We do not consider the fact that the initial Federal Board determination was made without input from the Regional Advisory Council to be a special circumstance, since all of the Board's initial determinations were made without Advisory Council input. And that point was brought out in your staff analysis.

With regard to population information, the State believes that any reassessment of the rural or nonrural status of the Kenai Peninsula should occur only with updated information from the 2000 U.S. census, rather than information from the 1990 census or other State or federal sources that provide only population estimates and not censuses. This review should also use information from a 1999 study of resource harvest and socioeconomic factors on the Kenai Peninsula that's being funded by one of your own agencies, the Fish and Wildlife Service, to update information on the Kenai Peninsula.
With regard to aggregation of communities, the Federal Subsistence Board, in our view, should continue to follow federal regulations regarding when to aggregate populations for rural or nonrural determinations. That is, and I quote, communities or areas which are economically, socially or communally integrated shall be considered in the aggregate. End of quote. There's a solid information basis for aggregating Kenai Peninsula road-connected populations. The Federal Board findings, as well as the State Board findings, are in agreement that the majority of the Kenai Peninsula population, that is about 46,000 persons in 1997, based on the estimates, lived in nonrural areas.

As I mentioned earlier, there is additional information and details regarding these comments in our December 9th, 1998 letter, as well as in November 11th, 1998 testimony. That concludes the State's comments, Mr. Chair.

CHAIRMAN DEMIENTIEFF: Thank you. We at this time have three people who are signed up. If there's anybody else who is willing to testify, please get the blue cards from the back table and they'll get them to us.

Allan Balkwin. Is that the correct pronunciation? Baldwin?

ALLAN BALDWIN: It's like the piano, Baldwin.

CHAIRMAN DEMIENTIEFF: Oh, okay.

ALLAN BALDWIN: First, I have a letter from Liisa Johansen Shaw, and I'll turn it in, but I'll just read a couple of paragraphs and then turn it in.

I urge the Southcentral Alaska Subsistence
21 Regional Advisory Council -- oh, excuse me. This was delivered to the Advisory Council on March 22nd, and I'll just turn it in for her to you now.

23 She says she would like to recommend that the Kenai Peninsula be declared a rural area. As a Tribal member and an employee of the Kenaitze Indian Tribe IRA, in Kenai, I see the grief and outrage in our people who cannot harvest their own subsistence foods. It is a hard thing to see our people standing in line to receive a piece of road kill moose because they cannot get a moose here due to the numbers of hunters and regulations on the Kenai Peninsula.

298 PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999

3 When the Federal Subsistence Board determined the Kenai Peninsula to be nonrural in 1991, that decision was based on the State's nonrural determination of the Kenai Peninsula, which the United States Court of Appeals, Ninth Circuit Court, expressly rejected in its decision in the Kenaitze Indian Tribe vs. State of Alaska. Additionally, this nonrural determination violated the Federal Subsistence Board's own criteria for rural and nonrural determinations as well. The Federal Subsistence Board's initial determination was made without regard to the Title VIII of ANILCA, 1980, which was expressly passed to protect the rights of Alaska Natives.

10 She goes on to say that, in conclusion, I believe the Federal Subsistence Board will recommend that the Kenai Peninsula be determined as a rural area, thereby allowing the residents a subsistence lifestyle, a right that is guaranteed to all Alaska Natives by the United States Congress; and an inherent right that gives us our life.
And just a few comments of my own. One of the -- in addition to the many special consideration issues that have been brought before you, in this past year the many meetings and board meetings that I attend -- I sit on the RC&D Board in Kenai, the Kenai Peninsula Watershed Forum, and on various other boards. And it aggravates me and it surprises me that one day a person can sit before you or the advisory boards and say the Kenai Peninsula is nonrural and that it should be considered urban. And they say that the Kenaitze just want to take over the fish and game on the peninsula. And then they come before a board asking for special project money that is specifically designated for rural areas.

And they also demand that we take their proposal, we deal with it in a very timely manner. They will continue to call the organizations and find out just where their proposal is in the machine of this organization. And they want us to put it on the front burner. They want us to treat their proposal in a fair, just and, again, a timely manner. And I think that that is the biggest consideration you have, is that the Kenai Peninsula rural determination issue has not been dealt with timely. And I would just like to urge you to consider that it's time to make a decision. It seems to me that the buck is being passed from one person to the other, and nobody wants to make the decision that affects them while they're sitting on a board. And it is a very hot issue, I understand that. There's a lot of contention. But it's the black buck that should not be passed to other people. Thank you.

CHAIRMAN DEMIENTIEFF: Any questions?
Thank you. Nina Demidoff.
NINA DEMIDOFF: Hello, I'm Nina Demidoff. I'm Alutiiq from the south end of Kodiak, and I've made my home in the Kenai for the past 24 years. From my way of living as being a subsistence person, we follow the four seasons, summer, winter, fall and spring, and we know when we hunt and when we gather our plants and our food. And we show our children this and I'd like to pass it on to my children, and it hurts my kids to find out that this is being taken away from them. One is 18 and the other one is 13, and I'm soon to be a grandmother, and I'm hoping that I can pass this on down to my own grandchildren. And I work for the Kenaitze Indian Tribe myself, and my son finally went on his first moose hunt with the Tribe, and they taught him how to take care of the meat. And I'd like to pass this on down to the other generations of the people in the area, and I wish to have this area as rural and not nonrural. Thank you.

CHAIRMAN DEMIENTIEFF: Any questions?

Thank you. Eva Lorenzo.

EVA LORENZO: My name is Eva Lorenzo, and I'm a lifelong resident of Kenai, which is my home. I speak today for my own Native people, to have this subsistence, because there's many years to come where it should be passed from generation to generation. I have grandchildren, and hopefully they'll pass it on to their children. To me, subsistence is very important.

When I grew up, subsistence life was our lifestyle. I helped my family to put up the fish. They used to put the backbones on the rack and sun-dry them for a couple of days, put them in the smokehouse and make some -- when it smoked a little bit, put it in a pot, put some potatoes, put some rice. And we helped to butcher the fish and helped our parents put the fish away. And I grew up with this lifestyle because we knew
how to make salt salmon and we knew how to butcher fish, and we knew how to save our fish.

And to me, this Native tradition still is with me. If I could pass it on to my grandchildren and their children, I'd be very happy, because today we don't have very many elders left in our Native tribe. And in order to keep what we have, like someone said a little while back, in order to keep this, we've got to survive. And to me, born and raised in Kenai was my lifestyle, and I'd like to keep my Native culture, my Native tradition. And I want to hand it on to my grandchildren and my great grandchildren. I have five grandchildren already. And to me, this is very important. This is why I come to these meetings, because of that. I want to keep this for my Native people.

And I struggle, and I come down here just to be here and to speak before the advisory board because it means a lot to me, my lifestyle that I was raised up with. And it's been a long time. I've been raised in Kenai, I've been a lifelong resident. And to me, if this could be passed on from generation to generation -- and I've already seen what they've been teaching the children out at the youth camp, how to smoke fish, how to pick the fish from the net, and do all that stuff. So this is what makes me very happy, because they know how to make the smoked salmon, they know how to pick the fish and all the stuff, what I was raised up with. So I would like to tell all of you thank you for letting me be here today, and I always make this trip because I know it's very important for all my Native people. Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. Any questions? Thank you very much.

This concludes our public testimony. We don't have any other requests. No more requests. This concludes our public comments. We're going to move into Regional Council comments, but before we begin that I
just want to caution the Council representatives that
the issue here are the special circumstances, and those
are what I want the comments on. We've all got much to
do, and if I hear somebody going on about something
other than the special circumstances, I'll be a little
bit short because we want to keep this conversation
focused. We're not here to debate the Kenai Peninsula's
rural or nonrural status. If we accept the special

301

PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999

circumstances, that will begin that debate. So I just
want to caution that, as well as Board members, you
know, when we advance to the Board discussions. We need
to focus our discussions.

With that, we'll open the Regional Council
comments. We'll go to the Southcentral first. It's
their region.

RALPH LOHSE: Mr. Chairman, in response to
your remarks. One of the suggestions that has been put
before you from the staff is not dealing with special
circumstances. It's dealing with an action that you
could take. And I feel that I'm required to talk to
that at the same time. We, as a Council, have found the
Kenai Peninsula rural twice. We have voted as a Council
that there are special circumstances. The special
circumstances have been pretty well laid out before you
so far.

One of the special circumstances that we
see, as a Council, is that if there are errors, if there
are mistakes, if there are problems that needed
corrected, to further put it off is unfair to the
subsistence users of the Kenai Peninsula. And use my
colleague, Nat Good's, illustration that he didn't use
this morning and I thought he would when we were dealing
with the C&T findings for the Dan O'Connor family, if
you put it off long enough, like one of the ladies
pointed out out there, some of the elders that are out
there will not be there to enjoy your decision one way
or the other.

And from that standpoint, as a Council, we
felt that that was the biggest special circumstance. We
do feel that there were questionable practices and
errors made in the providing the communities. We feel
that the fact that the Kenai is found rural for many,
many other purposes, in fact for almost all other
purposes, it seems contradictory to have it nonrural for
subsistence. They've demonstrated their use of it.

The thing that I'd like to speak to is the
idea that you put it off and you develop a methodology.
I think you should use the review to develop your
methodology. With the input you get in doing your
review -- and you're going to generate input from a lot
of interested people -- you'll be able to set up a
methodology that will help you when it comes time to
review those further down the line who have not
requested a review at this time, who have not been
consistent in trying to point out special circumstances
and why they need a review.

A suggestion from my point would be that if
you're going to do anything for reviewing on the Kenai
Peninsula, you should do it when the residents of the
Kenai Peninsula are there, which is in the wintertime.
Any time you're dealing with rural Alaska, the time to
deal with rural Alaska is in the winter. Those are the
people that are there that are making use of
subsistence. The Kenai Peninsula does appear like it
has a large population. That population is much greater
in summertime than in the winter, but the density is still fairly low.

I don't know if you can call it a special circumstance, but we, as a Council, feel like we have put a lot of time into this. We feel the fact that we have requested it, requested this determination twice, and requested special circumstances once, should in itself, maybe not be a special circumstance, but be a fairly powerful reason for you to look closely at your idea of what special circumstances are.

We feel that, you know, one of the things that was done in the original design was the drawing of lines. And those lines were arbitrary. We've had testimony from people who one part of their family is on one side of the line and the other part of the family is on the other side of the line, and there really isn't any difference between the two of them. They live in the same kind of houses, they drive on the same kind of road, they live just -- you know, it's a line drawn on the map. And it's divided families, it's divided neighbors, and it's caused contention in the area.

With that, I've got one more thing to say. And that is, when you have your hearings, if you have your hearings, I have to go along with what the lady said earlier. Hearings are not popularity contests. When it comes to subsistence issues, you should listen to subsistence users. There are people who do not want them to have subsistence access, but the issue really is do they meet the qualifications of rural and are they subsistence users. Thank you.

CHAIRMAN DEMIENTIEFF: Ralph, I was keeping track of every bit of your comments and, you know, one of the things was that was pointed out, in two different
areas, is that the Southcentral Regional Council was not involved in the original determination, and the fact that you have made two different recommendations to us. Those both were pointed out. So, I mean, if you thought your testimony was off -- I mean your comments were off, you were on on at least one of every point all the way through. So, I mean, you know, I guess what I'm saying is that the Southcentral Regional Advisory Council, you know, is one of the driving forces here. The Kenaitzes I know made the request, but you know from your involvement with us, the role that the Regional Advisory Councils play within the Board process. And so I just want to comment to that.

RALPH LOHSE: Thank you, Mr. Chair, and I realize that. I just thought that I should bring it out one more time.

CHAIRMAN DEMIENTIEFF: Sure. Bill, do you have a comment?

BILL THOMAS: Yes, Mr. Chairman. Thank you. I have some curiosities here. When you limit our participation to special circumstances, (inaudible) with what the ambitions of the Board are with regard to our participation. Are you looking for some sort of a resolve, or are you wanting us to help justify the delay of making a decision? There's been some compelling testimony heard today. So I guess if we're going to be confined to special circumstances, I need to see a fence that boundaries those circumstances so that any comments that I have will fall within those boundaries.

CHAIRMAN DEMIENTIEFF: I think you'll find them in the letter of request which outlines the special circumstances that initiated this process. And that's in the packet. There are the five points that are listed in there. I just want to focus on the issue at hand. We can sit here and debate the issue of whether Kenai is rural or nonrural, but that's not the issue here.

The issue here, is there a reason to reconsider whether the Kenai is rural or nonrural? And
what's driving that are the five special circumstances that the Kenaitze Tribe has given us to consider whether or not we can take this out of cycle. And then, should we find that there are special circumstances, then we'll begin the process of considering the rural/nonrural determination. So that's the issue at hand.

PACIFIC RIM REPORTERS
Federal Subsistence Board May 5, 1999

BILL THOMAS: I'm going to have to get ahold of that copy, review it, and I hope we're not through with this session by the time I get through it.

CHAIRMAN DEMIENTIEFF: They're right at the start of the letter. It's right in the packet. They've been available here the whole time.

BILL THOMAS: Council members, Mr. Chair, we get different correspondence at times.

CHAIRMAN DEMIENTIEFF: We do have a couple of opportunities here. We go to Regional Council comments, we're going to do Board deliberation, and we come back for Regional comments again. You know, so we will have a couple of opportunities here.

Are there additional Regional Council comments at this time? Yes?

NAT GOOD: Mr. Chairman. First, it doesn't seem to me that the concern is just on the part of the Kenaitze. It does seem also members of our panel do have some concerns here regarding what was done in the past, and they're not convinced that what was done was right.

Second, this request for review may seem at
this point to be untimely since it's 1999, and 2000 is
when the census will be done. But on the other hand, it
wouldn't be 1999 if we had been able to act sooner. The
fault, if it be a fault, that it's 1999, doesn't rest on
the shoulders of the Kenaitze people. I'd say it's more
on our shoulders.

We're not being asked at this point to rule
or make a decision on whether the Kenai is rural or
nonrural. We're simply being asked to look at it again
and reconsider original action that placed it in its
present status. And I'd like to support the
recommendation by Southcentral, that if we're going to
be looking at developing a new means or a better means
or a fairer means of determining rural or nonrural
status, doing such a review on the Kenai at this point
might be an effective way of developing that vehicle.

Finally, I'm not sure quite whether this is
pertinent or not, but every time I hear this thing, and
it was brought up again with Fish & Game on the road

PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999
Federal Board that they used a State standard? It don't make no sense to me. Here we have a federal program that makes a determination on what's rural or nonrural, and yet a State standard, which again, by the way, has some real problem with subsistence, was used.

Certainly, I can understand some Board members feeling to wait for 2000, but why wait? You're going to revisit it then again anyway. If the population numbers come out at year 2000 that it's more than what the standard being used for a rural setting, then you will have to revisit it. So I would think that a decision to determine whether or not it meets the circumstances to come out of cycle is appropriate, and I think the Board should make a decision whether or not the communities within the borough are rural. Thank you.

CHAIRMAN DEMIENTIEFF: Thank you.

Additional Regional Council comments? Yes.

VINCENT TUTIAKOFF: Yes, Mr. Chair. Vince Tutiakoff of Kodiak-Aleutians.

Kodiak was used as an example of a redefinition of nonrural to rural, and it was a special type circumstance that came about. The communities, as they developed in the past eight years that I have been part of this Board, I've seen a great pride in culture, grade pride in their language, a great pride in the use of their substance on and around Kodiak. And that was all because a determination was made that Kodiak is a rural community. And that on its own should be taken into -- as part of the special circumstance for the Kenai Peninsula.
We from the Aleutians know full well the impact of not having cultural pride, or being overrun because there's a military need, being removed from your homes. Basically, that's what's happened to the Kenai Peninsula. The Alaska State Department of Fish & Game has been anti-subsistence and, to use Willie's words over there, why did we use the State standard to determine subsistence? I understand the process, the need to -- and not having the Advisory Councils being part of the determination process. They were not in place. There was a six-month period in the beginning of this whole process that caused a lot of confusion. So we from Kodiak-Aleutians support the Southcentral subsistence recommendation for the Kenai rural issue, and ask for the Board's vote to rectify an injustice to these people on the peninsula. Thank you.

CHAIRMAN DEMIENTIEFF: I think your testimony is real germane, because although it wasn't appealed because it was found out during the regulatory cycle, that most of Kodiak was found to be rural, but in the original recommendation, Kodiak was aggregated with Chiniak and the -- is that the Coast Guard station? You know, so that was aggregated early on in the process. And I guess what I'm pointing out to you, I think your testimony is real -- because there was an aggregation error that was made early on in our process when we adopted the regulations back in 1990, 1991.

VINCENT TUTIAKOFF: Thank you, Mr. Chair, and again we urge you to take the special action and consider the Kenaitze's need to have subsistence in their lifestyle. Thank you.

CHAIRMAN DEMIENTIEFF: Mr. Goodwin, I was just going to comment briefly, too, that why did we use that early on process. And, you know, it's been said many times in many of the meetings that I've been involved with the Federal Board, we had to have a beginning point. And in order to get a program on the ground, in many cases we adopted the State regulations.

UNIDENTIFIED SPEAKER: (Inaudible)

CHAIRMAN DEMIENTIEFF: I was talking about
the regulations. Mr. Thomas.

BILL THOMAS: Thank you, Mr. Chairman. Having reviewed some of the language in here, one of the

most interesting terms I find in here is "aggregation." Growing up, one of the first words I learned was "rural." Our textbooks in school made reference to rural settings. And rural was like the cheese. It stood alone. There wasn't any aggregation. So if you want to change the character of something, aggregate it and it's no longer what it's supposed to be. So that was the flaw, a serious flaw, in any determination by using the process of aggregation. Had it not been for that, there wouldn't have been any argument that the Kenai Peninsula would have in fact qualified as a rural area.

I was here from the very first meeting, and the testimony we heard at that meeting was in great contrast to what it is now. There wasn't anybody at that meeting that supported any part of ANILCA. And the results of the determination from that point on, we selected the attitudes and ambitions of the testimony we heard then. So with my colleagues on the Regional Councils, I would encourage you to eliminate that process of aggregation in determining rural status, and go back to the formula that we used initially. From what I understand, there was a figure of 7,000 population in any one given community that decided whether or not it was rural or not. And for some reason that doesn't seem to apply to the Kenai Peninsula, but it does in the rest of the state. So I would urge reconsideration and support the testimony, the compelling testimony, to get these proud people off their knees and give them back the courage to look
society in the eye. Thank you.

CHAIRMAN DEMIENTIEFF: Thank you.

Additional Regional Council comment? Mr. Sam.

RONALD SAM: Yeah, thank you, Mr. Chairman. Just for my clarification, I have a question. And it is, just how -- to what extent does Title VIII of ANILCA cover these people? Because I, too, feel for all of our Native people.

CHAIRMAN DEMIENTIEFF: Is that with regard to the fact that Title VIII is Indian legislation? Is that something you could speak to, Keith?

KEITH GOLTZ: I can speak to it. I do so, though, with a preface that I think much too much is being made out of those terms. As lawyers use them, it's a method, a tool, for interpretation, and you only use that tool when the plain language of the statute is unclear. So that in almost every case, whatever the answer is, it's going to be irrelevant to a determination. Our first task should be to read the plain words of the statute.

Having said that, there has been some controversy over the term "Indian legislation." One panel of the Ninth Circuit did say that it was. That was the original Gambell court. That case was taken to the Supreme Court and reversed there. A second panel of the Ninth Circuit just recently has said that Title VIII of ANILCA is not Indian legislation. I just heard this morning that that will be brought up for reconsideration. But whatever the answer is, that shouldn't drive our considerations here, and it doesn't
9 drive the considerations of the court. We should be
looking at the purposes of ANILCA, the factual record
before us, and come to reasoned and rational decisions.

10 CHAIRMAN DEMIENTIEFF: Additional Regional
Council comment?

11 GRACE CROSS: Mr. Chair.

12 CHAIRMAN DEMIENTIEFF: Oh, yes.

13 GRACE CROSS: After listening all day and
reading the five special circumstances, I feel that just
the five special circumstances provide compelling
evidence to make expedient decision in this case instead
of having people to wait additional more years. We're
not talking about one individual, one individual looking
for C&T determination. We're looking at a group of
people. Thank you.

19 CHAIRMAN DEMIENTIEFF: Thank you.
Mr. Thomas, you have additional comment?

20 BILL THOMAS: Thank you, Mr. Chairman.
With respect to our Solicitor's explanation on getting
away from lawyers' sense of language and getting back to
existing language in Title VIII, of which I'm more than
happy to do. Because you read the first five lines of
Section 8.01 in Title VIII, and that will give you clear
direction on who is eligible and who is not.

24 Also, Title VIII is only an umbrella. If
the stocks are adequate, if the management principles
are as good as people say they are, then there shouldn't

309

PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999

1 be any concern. But the longer our meeting goes on, the
longer we find that there are many stocks in peril, and
nobody's made a determination that there's a problem
with fisheries management. So I would agree with the
Solicitor and make reference to Title VIII. Thank you.

CHAIRMAN DEMIENTIEFF: Thank you.
Additional Regional Council comment? Yes, Mr. Rexford.
FENTON REXFORD: Mr. Chairman. I'd like to
support the Southcentral Regional Advisory Council's
recommendation, in having the Kenaitze Indian Tribe
preserve their livelihood and their subsistence way of
life and pass it on to their children. I would urge
that we take care of this. After I've been hearing all
the testimony and reading background on many testimonies
taken, and there is enough to make a decision this
afternoon. So I support, again, Southcentral,
(inaudible) for the Kenaitze Indian Tribe folks from
down there, Kenai area. Thank you.

CHAIRMAN DEMIENTIEFF: Thank you.
Additional comment?
WILLIE GOODWIN: Mr. Chairman?
CHAIRMAN DEMIENTIEFF: Yes.
WILLIE GOODWIN: One other point I forgot.
I do support Southcentral's recommendation. But another
point I would like to point out is the majority decision
of the Staff Committee. I like that decision, to view
this as a special circumstance.

CHAIRMAN DEMIENTIEFF: Yes.
GRACE CROSS: Mr. Chairman. If the Board
can consider individual C&T, why not tribal C&T?
CHAIRMAN DEMIENTIEFF: Do you want to take
a crack at it?
KEITH GOLTZ: Yeah.
CHAIRMAN DEMIENTIEFF: Mr. Goltz was just
commenting on how proud he was that we got through the
whole regulatory process and never called on him once,
KEITH GOLTZ: That's true. It's a sign of

This is not an easy one to answer. There is an answer. And the answer is in the plain language of ANILCA, and it has to do with Congress and how it treated Park areas. The Park and Monument areas were treated with special consideration for the Park and Monument areas. Considerations that weren't given to other public lands. And basically, what that means is that fewer people are probably going to get to hunt and fish on Parks and Monuments than they would get to do on Refuges and Forests. And that's a judgment made by Congress.

The way they did that is to set up a different sort of eligibility requirements for Parks and Monuments. And in the legislative history, Congress said a couple of things. One is they didn't want a permit society. And the Park Service has implemented that basically by setting up resident zones. So that if somebody's within that zone, you get to use the Park and Monument lands.

They also had special consideration given for people who had historically used Parks. This is something different than the rest of Title VIII. In the rest of Title VIII, you become a rural user by living in a rural area. You don't need any long history, until we get to periods of extreme shortage. In Parks and Monuments we've got special rules, special results. And I would agree with you, at first blush it appears wildly
inconsistent.

ANILCA does not, however, turn to the tribal unit with a blind eye. It starts with a tablet that includes all of rural Alaska in periods of abundance. When shortages occur, we narrow down the area of available user groups in Section 8.04, so that we gradually become dealing with people who have a higher dependence on the resource and an historical use pattern. And I think our common experience would show us that the people who have been on the land the longest and who have lived closest to the resource probably are going to be the tribal groups in many cases. We don't start that way, we don't use that language to get there, but that's probably where we do end up in 8.04.

CHAIRMAN DEMIENTIEFF: Further Regional Council discussion? You will get another opportunity

once we, of course, begin the Board deliberation process, which we shall now begin.

NILES CESAR: Are you ready for Board deliberation?

CHAIRMAN DEMIENTIEFF: Yes, that's what I'm saying.

NILES CESAR: Mr. Chairman, I'm prepared to make a motion so we have something to discuss on the floor. I move to accept the Kenai tribe request and Regional Advisory Council recommendation to reconsider the Board's 1990 nonrural determinations on the Kenai Peninsula, based on special circumstances. That review is to be completed and back to the Board by May 2000. So moved.
CHAIRMAN DEMIENTIEFF: We have a motion. Is there a second to the motion?

UNIDENTIFIED SPEAKER: Second.

CHAIRMAN DEMIENTIEFF: It's been moved and seconded. Discussion?

DON OSTBY: Mr. Chair.

CHAIRMAN DEMIENTIEFF: Yes.

DON OSTBY: It's with some hesitancy that I comment, being the newest member of this group, so I hope you'll be patient with me. The new ears and new eyes I bring to this may have misunderstood. My understanding, that this is really not a C&T question, nor is it a Native preference question. What I understand this to be is a question regarding the original rural determination decision for the Kenai and whether or not special circumstances exist which argue for a review of that decision.

With regards to significance, and after listening to the thoughtful testimony today, it would be hard to not feel that this is certainly significant to many of the people in this room. The staff, in their report, acknowledged inconsistencies of applying criteria, which raised questions in their minds, and acknowledge the availability of new information. From my perspective, at least, administrative convenience is not an appropriate criteria for deciding whether or not to do out-of-cycle review.
In addition, the divisiveness of this issue must be acknowledged, but cannot be avoided because it exists regardless of what decision we make. So from my perspective, at least, there is significance to this situation. And I believe that the issue of timing that's been raised, had this been a new proposal to the Board, I think we would be fully justified in deferring it, recognizing the oncoming census. However, this is something that in many ways we brought upon ourselves through the many years of discussion, and so I propose to support this motion.

CHAIRMAN DEMIENTIEFF: Additional comment?

NILES CESAR: Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Yes.

NILES CESAR: Without sounding like I'm speaking to the choir here, I think we, you know, have listened to a lot of testimony over the last few years, and I think that we all have our own position about the rightness or wrongness of the decisions made in 1990. The fact remains, is we're here, we're here today, and for us to put this off until information is available, which would likely be 2002 or 3, possibly, before full information is available, I don't think is reasonable, and I think that we've got to start the process. And I think this is the way we start it, is to get on with it. I would support my own motion.

CHAIRMAN DEMIENTIEFF: Additional comment?

DAVE ALLEN: Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Yes, Mr. Allen.

DAVE ALLEN: I'll be very brief. I came to this meeting, I think, pretty well convinced that the Staff Committee had made a very good argument for delay. However, as I listened to the testimony today, I think the issue of its significance to the community, I've been reminded very sharply, not only because of today's testimony, but also because of testimony that we've received in the past on the Kenai relative to how significant and how important this overall issue is on
I'm not sure whatever we can do, Mr. Chairman, is going to at all diminish the divisiveness, because even as we speak about the possibility of passing the resolution to begin immediately to consider this out of cycle, whatever our decision, I don't think anyone should presume that that decision is necessarily going to remove that issue on the Kenai. Because whatever the outcome, I think that the possibility still exists that some form of divisiveness will remain.

However, we've been at this business for quite a while now, as has been mentioned. When we began the process in 1990, I think there was a high level of expectation that the State would act quickly to resume its responsibility by changing its constitution as necessary. Here we are nine years later with the very likely prospect that it's never going to happen. We have been the managers of the subsistence priority for the last nine years. It certainly looks like we'll continue to do this. It seems to me that we need to get on with the business, and this is certainly an issue of important business that we need to deal with. So I intend to support this motion, Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Thank you. Additional comment? Mr. Rabinowitch.

SANDY RABINOWITCH: Sandy is good enough. Thank you, Mitch.

I'm encouraged by Mr. Allen's words and, having been part of the process and been to many of the
meetings, both on the Kenai Peninsula and many of the Southcentral Council meetings, and heard much of this testimony several times, I intend to vote for the motion.

CHAIRMAN DEMIENTIEFF: As far as my perspective on this tonight, you know, I believe that there was an error in the aggregation of the communities. And I think we found that out in 1995 when we did the C&T determinations, because in a similar issue we found some huge gaping holes that we did our best to work on at that particular time. And while it wasn't a perfect decision, you know, we still were able to document some C&T determinations.

And we have firsthand knowledge of the divisiveness of this issue. I, myself, personally attended seven out of the eight of those hearings, six out of the seven on the peninsula, and, you know, was subject to some terrible testimony, indicating the divisiveness of this issue. The only reason I missed the one was because I recall I had brand-new car, car problems, and that was the only thing that caused me to miss one of the hearings. I think that was in Homer.

But believe me, when I did catch up with the crew, I tracked them and I found that the same type of testimony was received in Homer that was basically received pretty much throughout the northern part of the peninsula anyway.

With regard to, you know, whether or not ANILCA is Indian legislation or not, I was particularly caught by the testimony from Kodiak and with regard to the correction in that decision that was made, and the explosiveness that's happened, explosive regrowth in the
Alutiiq culture since then. And I don't doubt for one minute that that was tied to that correction in the determination. Because in this decade the Alutiiq culture has come alive. And for the most part, it was beginning to be a dormant culture at that time. And I'm particularly speaking of whether or not ANILCA is Indian legislation, there's no doubt that that decision, or that correction of what was a wrong decision or wrong assertion, was directly responsible, or one of the principal responsibilities.

The fact that there was no Regional Council participation, we didn't have Regional Councils at that time. But the growth in the federal program, at least on the game side, has come from recent years and the absolute involvement of our Regional Councils and their participation in all of our decisions. I wish we would have had these kinds of Regional Councils when we first started out. But the growth that we've made, the progress that we made is because in recent years we partnered, although we have retained, clearly, the decision making authority, you know, clearly, because that is the Board's responsibility. It's not a responsibility of the Regional Councils. But we've partnered and we've come to grow with their recommendations. And it's been good advice. And every time we've hit a thorny problem -- and we've hit a few -- the Regional Councils have played a principal role, whenever we've had to bring whatever. And the most recent example was signed, the resolution was adopted yesterday, and the recent signing of the Muskox Management Plan in the North Slope.

And every time we accomplish them, you know, it makes me proud because that does prove that
irregardless of whether you're State, in the case of the
Borough, the federal government, you know, we've been
able to come together. We've been able to persevere
with local people, despite each of our mandates, in some
areas. And I'm proud of each and every one of those
successes. And at the bottom of each and every one of
those successes, the Regional Advisory Council has been
the driving force. And as we hit these thorny problems
in the future, it's going to continue to be that way
because that is their role.

With regard to the Southcentral Regional
Advisory Council rural recommendation, I've been
supportive in the past of delaying the Regional Council
recommendation. And the reason is because I wanted to
make sure that in this kind of a tough issue, that the
Southcentral Regional Advisory Council went out and did
its homework. And they did that last fall. They've
done everything that we have asked them to do.
Everything. And while part of me wants to jump in and
tackle these tough problems, in recognition of this
trend of going to the Regional Councils, I just wanted
to make sure that the Regional Council was out there and
knew exactly what the situation was.

And the Regional Council did that. They
went out there and they had their hearings, they took
the tough testimony. And their recommendation, for that
reason, because they went out and did their homework,
has so much more weight with me. And I never doubted
their recommendation at any point in time. But the fact
that the Council went out there and did its homework,
I'm ready to go for all of those reasons, to support
this motion.

But I caution, even if we pass this today,
it doesn't mean that tomorrow the Kenai Peninsula is
going to be rural or next week it's going to be rural,
or that we can make a decision next month. We are
making this based on what happened in 1990, the 1990
census information. We're basing it on that because
that's our most recent. Until we get complete. So
we're going to take our time.

And I think, as far as the staff
recommendation of waiting for the 2002 census, and
building a good solid recommendation, I personally subscribe to the testimony that several people gave today. Use this as a tool to allow us, when the new census information comes in, that we'll be that much farther along.

But to the Kenaitzes, it appears that the request is going to be answered, but don't expect it to happen overnight. We're assuming management in fish. There's no apparent change in the legislative initiative. We have big and serious work on every front. Still, it will be June 1st before we get the first money to work on fish. We have all of these other complicated issues, and some of you that have sat through here the last few days and last few years have seen them. Some of the things I've mentioned that we have to work on.

If and when this motion does carry, we're going to have to schedule it, we're going to have to work on it. It's not going to happen overnight. We're going to need the time to be able to do it, and that may frustrate some of you. But the fact is, if this motion carries, we're going to go ahead and we're going to schedule that to the best of our ability, and within the resources that we have. But believe me, we have worked this staff as hard as we can with the resources we have. It doesn't mean we can't do it. It doesn't mean we're going to delay for years. But it does mean that we're going to need some time to do it. But we will schedule those meetings when we're going to talk about this. We will schedule them, there will be a public meeting. You will be available to track with us as we schedule these things. But I just ask, knowing what I know about the Kenai, having gone through those 95 determinations when we had very much less on our plate -- you know, knowing
what I know about this issue, it's going to take some
time, but we will be able to do it. And you will be
able to track us, because it's not something that's
going to be done behind doors when we talk about
scheduling these things.

Final round of Regional Council comment and
we're ready to vote. Mr. Thomas?

BILL THOMAS: Thank you, Mr. Chairman.
This is indeed a milestone in my involvement. In the
capacity of a Regional Vice Chair, I knew the potential
was there, I knew the chemistry was there, I knew the
commitment was there. I appreciate the

PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999

conscientiousness and the convictions that were
eloquently expressed, especially by Mr. Allen, with
regard to the divisiveness. The nature of the
population of Alaska, the nature of the issue at hand
has opposing philosophies, and respectable
justifications on both sides. Resource is one part of
our environment that demands respect and responsible
stewardship of its use, whether it's for consumption or
whether it's for marketing. It deserves the respect of
that responsibility and discipline.

I'm also really elated to know that the
testimony we heard today, based on some very good
homework from Southcentral, caught the ear and was able
to be understood to a point to give you the confidence
to move forward on it. I commend you for that. I think
it's very wise. It's not going to be easy. You're
going to run into confrontation in the process. But we
have a legislative process in ANILCA that gives us a
step by step guideline. As long as we can follow those
guidelines and steps to the best of our understanding
and interpretation and intent, we'll do okay. And I
just wish the Board as a majority to pass this motion.
I certainly support the motion. And in any case, you've
all got my respect regardless of the direction you take
on your vote. Thank you, Mr. Chair.

CHAIRMAN DEMIENTIEFF: Any other final
Regional Council comment?

RALPH LOHSE: Mr. Chair. Ralph Lohse,
Southcentral. I, too, would like to thank the Board for
the motion that's on the table. I hope after this
motion is voted on the ball will be in your court, not
ours. And as Southcentral chair, I'd like to also
remind you that, you know, the job's not going to be
done for the people that have been coming and
testifying. You're going to have to count on the fact
that a lot of the people that have brought it this far
are going to have to be coming again, and they deserve
our respect. And I thank you for that.

CHAIRMAN DEMIENTIEFF: Any other final
thoughts?

PEGGY FOX: Mr. Chair.

CHAIRMAN DEMIENTIEFF: Yes.

PEGGY FOX: We're done with Council

PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999
FENTON REXFORD: Thank you, Mr. Chairman. Your actions today, or the other day, on the example becoming reality is the cooperation with the controversial partners or colleagues that we have around this table here. It's difficult to get all the users and all the federal and state agencies together, but once we get a working group, we roll up our sleeves together in the room and make it hot. But we got time to cool off and pursue your project, whatever it is. Thank you for using this as an example, and hopefully that will go on with the folks in the Southcentral area.

CHAIRMAN DEMIENTIEFF: Vince.

VINCENT TUTIAKOFF: Yes, Mr. Chairman. I'd like to thank you for your comments earlier regarding the explosive lifestyle changes made in Kodiak. We understand this process is going to take what it will take for the people in Kenai. At least now they can start to put together a program that will be good for their communities, for their children, and the elders now can be looked at as teachers. And hopefully this is what this is all about, and I thank you for the motion and hope that we go ahead from here. Thank you.

CHAIRMAN DEMIENTIEFF: Peggy?

PEGGY FOX: Yes. I just wanted to add my support to the motion. And very briefly, I guess the only thing else that I wanted to say that would add to what's already been said is to build on what Ralph was saying and thank the people that came today and that came to the hearings on the Kenai. I think the more information we have, the better the decisions we make. And very often the decision sways on the testimony at the hearing. And so I wanted to thank you and say I'll probably see you at the next hearing.

CHAIRMAN DEMIENTIEFF: Okay. I think everybody's had their say now, and if nobody has any objection, we're going to go ahead and move on and take the vote. All those in favor of the motion, please signify by saying "aye."
IN UNISON: Aye.

CHAIRMAN DEMIENTIEFF: Those opposed, same sign.

(No response.)

CHAIRMAN DEMIENTIEFF: Motion carries.

With that we complete work in the Southcentral Peninsula. I just want to make a brief comment. We've got a couple of other items, Board members, as I talked about earlier. One of our friends is leaving us, and now I know why. He must have had an inkling of the vote. Mr. Robert Willis, I guess will be taking a job in D.C. But he was a big part of those hearings on the Kenai in 1995, and he must have had an inkling which direction this Board was going to go, because he's transferring out before we head back to the Kenai. But I understand, Robert, that you've got a new assignment back in D.C., and I just want to express my appreciation for all the work you've done within your job responsibilities.

ROBERT WILLIS: Thank you, Mitch. Going back to the Kenai has nothing to do with my decision.

(Laughter)

ROBERT WILLIS: I think the Board did some excellent work today, and I'd like to personally thank everybody that I've worked with and that supported me and worked so hard to make this program go for the last seven years. I agree with you that there's a lot of thorny issues that are going to have to be dealt with. Every time the Board meets and the Council meets and the Staff Committee meets. I'm personally encouraged by the increasing length of the list of consent agenda items
Certainly there will always be a lot of disagreement in an arena like this, but there's also a common thread that binds us all together, and that is that everybody here is concerned about making sure that there are always healthy populations of wildlife out there, both for its own intrinsic value and for the benefit of the people who use it. And I think that as long as we all remember that, that we'll continue to be able to work together, even though we also continue to disagree. So thanks for the experience and for the education.

CHAIRMAN DEMIENTIEFF: Thank you. Again, we had asked the Regional Advisory Councils to meet to name some people to help us with our fisheries discussions with the State. I am going to ask the Commissioner of Department of Fish & Game to add these names to the list of people who will meet jointly. If the State, for whatever reason, balks at the decision, these two names and their alternate will be added to our Federal Board when we meet to discuss these discussions. You know, we will give the State the courtesy, since this did come up only on Monday, we will give the State the courtesy if they want to reject. That's no problem. They'll still be a part of our own discussions, because normally we meet prior to meeting with the State to go over issues. But the Regional Council chairmen have appointed Dan O'Hara and Willie Goodwin as their two delegates, with Ron Sam as their alternate. So I would just make that announcement. And they will be involved in the discussions at whatever level.

The recommendation of the Staff Committee
with regard to the core team staff is that Greg Bos be
the federal lead, Bob Gerhard, Monty Millard, and Cal
Casipit. That's the recommendation from the Staff
Committee as the core team staff. I'm not sure, did we
need that for a Board motion?

UNIDENTIFIED SPEAKER: You asked us to
report to you.

CHAIRM AN DEMIENTIEFF: To report on what
the recommendation was. I don't know if we want to just
make that. Now, the thing to point out is irregardless,
even though we've kept this team staff, that it's not
going to limit other staff being there. They're not
going to be closed meetings. There just simply wasn't
enough seats to go around, since we tried to keep that
core team real small. But every time they meet, either
individually or with the State, you know, other staff
are still invited to that process. Particularly, I'm
sure they'll be airing out their agendas of what's going
to be on there, and if there's something that's a
subject matter that people feel they need to have a
staff person on there, then I don't think that's going
to be a problem. So do we want to just accept the Staff
Committee recommendation, or what's the pleasure of the
Board? Is there a move to do that?

321

PACIFIC RIM REPORTERS

Federal Subsistence Board May 5, 1999

1 UNIDENTIFIED SPEAKER: So moved.

2 UNIDENTIFIED SPEAKER: Second.

3 CHAIRMAN DEMIENTIEFF: It's been moved and
seconded. Discussion? Hearing none, all those in favor
4 signify by saying "aye."
IN UNISON: Aye.

CHAIRMAN DEMIENTIEFF: Those opposed, same sign.

(No response.)

CHAIRMAN DEMIENTIEFF: Motion carried.

I think we've completed our agenda, have we not? Is there anything else? Mr. O'Hara?

DAN O'HARA: Mr. Chairman, I just want to thank you for helping us out with the proposals. We appreciate you taking each one and wading through them. We found out that you are not a rubber stamp board. You can tie a vote just like we can, and a lot of consideration was given, and we thank you very much for your time.

CHAIRMAN DEMIENTIEFF: Good, okay. With that, we've completed our work ahead of schedule, and I guess there being no further business, we shall adjourn the Board.

(Meeting adjourned at 2:45 p.m.)

-oOo-

PACIFIC RIM REPORTERS
STATE OF ALASKA )

I, KIM R. BEHRENS, RMR-CRR, Registered Merit, Certified Realtime Reporter, Notary Public in and for the State of Alaska, do hereby certify that the above transcript, pages 220 through 323, inclusive, was reported stenographically by me, and at my direction transcribed by means of computer.

I FURTHER CERTIFY that the foregoing is a transcript of the proceedings which occurred at the time and place specified hereinbefore.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ______ day of __________, 1999.

______________________________
Notary Public
State of Alaska

My Commission Expires: 4.24.00