FISH AND WILDLIFE SERVICE FEDERAL SUBSISTENCE BOARD
EGAN CONVENTION CENTER
ANCHORAGE, ALASKA

JUNE 28, 2001
1:00 o'clock p.m.
PUBLIC MEETING

MEMBERS PRESENT:

Mr. Mitch Demientieff, Chair
Mr. Fran Cherry, Bureau of Land Management
Mr. Gary Edwards, U.S. Fish and Wildlife Service
Ms. Judy Gottlieb, National Park Service
Mr. Niles Cesar, Bureau of Indian Affairs
Mr. Jim Caplan, U.S. Forest Service

Mr. Keith Goltz, Solicitor
CHAIRMAN DEMIENTIEFF: We'll go ahead and call the meeting to order. My name is Mitch Demientieff, I'm the Chairman of the Federal Subsistence Board. And with that, I'll ask, beginning with Niles over here, ask the other Board members to introduce themselves and their agency affiliation, please.

MR. CESAR: I'm Niles Cesar, the Regional Director for the Bureau of Indian Affairs.

MS. GOTTLIEB: Judy Gottlieb, Associate Regional Director, National Park Service.

MR. CHERRY: Fran Cherry, State Director with Bureau of Land Management.

MR. EDWARDS: Gary Edwards, Deputy Regional Director, U.S. Fish and Wildlife Service.

MR. CAPLAN: Jim Caplan, Deputy Regional Forester for Natural Resources, Forest Service.

CHAIRMAN DEMIENTIEFF: If there are no corrections or additions to the agenda we shall go ahead and proceed. We're here today to consider request for reconsideration 00-02.

Good afternoon, ladies and gentlemen. The meeting of the Federal Subsistence Board is now called to order. On behalf of the Federal Subsistence Board I welcome you to this public hearing to address two requests for reconsideration. These requests were submitted by the Safari Club International, the Alaska Chapter of the Safari Club International, the Kenai Peninsula Chapter of the Safari Club International, the Kenai Peninsula Outdoors Coalition and the Cooper Landing Fish and Game Advisory Committee. These organizations request that this Board reconsider its decision of May 4th, 2000. There are communities located on the Kenai Peninsula are rural for the purposes of implementing Title VIII of the Alaska National Interest Lands Conservation Act.

As back ground, the Board's decision was made in response to a petition submitted to the Southcentral Regional Advisory Council by the Kenaitze Indian Tribe in March 1998. In March 1999, the
Southcentral Council recommended to the Board that all communities on the Kenai Peninsula be determined rural in support of the Kenaitze Indian Tribe's request. The Board's May 2000 decision following the publication of a proposed rule, request for public comments and a public hearing in Kenai.

The procedure that the Board will use this afternoon is presented on the agenda and will proceed as follows: Mr. Tim Jennings will present a briefing on the Staff analysis. Ms. Ann Wilkinson will follow with a summary of written public comments and will present the recommendation of the Southcentral Regional Advisory Council. Ms. Peggy Fox will give the Staff Committee recommendation. And the Alaska Department of Fish and Game will provide their comments. And then we'll move onto public testimony before the Board deliberation and decision. We have Ann Seidman on line representing Safari Club International and she will be leading off the public testimony when we get to that point.

With that, we'll call on Tim Jennings for the Staff analysis.

MR. JENNINGS: Thank you, Mr. Chair and Board members. For the record, my name is Tim Jennings and I am Chief of the Coastal Regions Division in the Office of Subsistence Management. Also with me today is Pat Petrivelli, Staff anthropologist for the Southcentral Region and Ann Wilkinson, Council Coordinator for the Southcentral Region. My presentation today is a summary of the Staff analysis dated June 2001 for the request for reconsideration of the Kenai Peninsula rural determination of May 4, 2000. Further details and specifics related to my briefing are contained in the full Staff analysis which has been provided for you.

Before we proceed to the claims raised in the request for reconsideration, I want to summarize the rural determination methodology adopted and in use by the Federal Subsistence Board. This will provide important background and context in the subsequent discussion regarding specific claims raised in the RFRs, the request for reconsiderations.

The rural determination process followed by the Federal Subsistence Board during the 1990 rural determinations and for the Kenai Peninsula out of cycle review has been described as a two-step methodology, aggregation and then evaluation. During the 1990 rural
determination process, the Board determined that it was appropriate to aggregate communities which were economically, socially, and communally integrated. The November 1990 Federal Register contained the following information relating to the aggregation step. It is recognized that communities of the same size may vary greatly in character for a variety of reasons, therefore, no single population number adequately serves as a dividing line between rural and non-rural communities. Before examining community characteristics, communities that are socially and economically integrated were aggregated and the criteria used to determine if communities are socially and economical integrated includes the following three criteria.

1. Do 15 percent or more of the working people commute from one community to another;
2. Do they share a common school district; and
3. Are daily or semi daily shopping trips made.

These aggregation criteria were developed by working with the Institute of Social and Economic Research, the Alaska Department of Labor, and the Municipality of Anchorage. Communities were aggregated according to these criteria the populations for the community areas were determined in preliminary rural and non-rural screening of the communities than began.

The second step of the rural determination process is evaluation. The November 1990 Federal Register also contained the following information regarding the evaluation step. The process to determine rural was designed to incorporate the common meaning of rural and its based on two rebuttal presumptions. A community or area of less than 2,500 population is deemed rural unless it exhibits characteristics of a non-rural nature or area or as part of an urbanized area. The number 2,500 was selected because it is the figure used by the U.S. Census Bureau to divide rural from non-rural. A community between 2,500 and 7,000 bears no presumption as to its rural or non-rural status. Some communities that fall in this population range may have rural characteristics. And finally communities 7,000 or greater in population are presumed to be non-rural. The 7,000 population level was chosen because Ketchikan, the smallest of non-rural
communities mentioned in the Senate report was approximately that size when ANILCA was passed and consequently is an indicator of Congressional intent. Communities in Alaska can approach and may rarely exceed a population level of 7,000 and still be rural in character. 

After the initial screening and evaluation step, using the population thresholds, community characteristics are evaluated to make a final determination regarding rural/non-rural status. This rural determination methodology and process recognizes that population alone is not the sole indicator of a rural or non-rural community. This flexibility allows the Federal Board to look beyond population size at additional indicators for rural and non-rural. Indicators which the Federal Subsistence Board evaluates to decide if a community is rural or non-rural in character are contained in the following general categories: Use of fish and wildlife, development and diversity of the economy, community infra-structure, transportation and educational institutions. The Federal Subsistence Board utilizes 13 specific community characteristics in the rural determination process and a complete list of these 13 characteristics can be found in Table 3 on Page 19 of the June 2001 Staff analysis.

And now turning to the claims associated with the two requests for reconsiderations. As mentioned in the opening remarks, the Safari Club International, et al., and the Cooper Landing Fish and Game Advisory Committee submitted requests to have the Federal Subsistence Board reconsider the May 2000 Board determination that the entire Kenai Peninsula is rural for the purposes of implementing Title VIII of ANILCA. On August 15, 2000, the Board decided that some of the claims might have merit and instructed Staff to prepare an analysis of the issues raised in the request for reconsideration.

The two requests for reconsideration contained 19 claims. Seven claims were found to merit further consideration and were grouped into four issues. The analysis of claims grouped by issue are:

1. Aggregation;
2. Population and Evaluation;
3. Flawed Methodology; and finally,
4. ANILCA intent.
I will first summarize the claims referenced as numbers 9 and 13 in the 2000 Staff analysis as they were submitted by the requesters relating to Issue No. 1, aggregation. The requesters state: The information submitted to the Federal Subsistence Board, either through the ISER report or through public testimony did not provide the information necessary to change the non-rural designation of the Kenai Peninsula. Furthermore, the requesters assert the aggregation component of the analysis is imposed by regulation. On May 4, 2000, the date upon which the Federal Subsistence Board redesignated the Kenai Peninsula, these three criteria were still the established method for assessing aggregation. Consequently, under established rural/non-rural designation criteria, the communities of the entire Kenai Peninsula must be aggregated and in this aggregated status, these Kenai communities rise to the population levels that trigger the presumption of non-rural status. Moreover, the requesters continue these regulations require that communities with populations of more than 7,000 shall be presumed non-rural, unless the community or area possesses significant characteristics of a rural nature and that the Federal Subsistence Board ignored this presumption. The regulations also require that communities or areas which are economically, socially and communally integrated are to be considered in the aggregate, the Board made no attempt to aggregate any of the communities on the Kenai Peninsula.

The Staff analysis of these claims indicate the following: The 1990 rural determinations aggregated three areas on the Kenai Peninsula, Kenai, Homer and Seward. And a map that depicts these three aggregated areas is found on Page 2 of the Staff analysis.

The record from the May 2000 Board decision is unclear and conflicting as to how the Board evaluated the aggregation step for Kenai communities and, therefore, comes before the Board for further consideration.

And finally, the Staff analysis conducted in February 2000 and in the June 2001 analysis for this request for reconsideration suggests that the 1990 aggregations on the Kenai Peninsula for the Kenai, Homer and Seward areas are valid and reasonable.

We turn now to the Issue No. 2, population and evaluation. The claims as submitted by the requesters as they relate to Issue No. 2, population and evaluation which are referenced as claims six and 13 are summarized by the following: The requesters state, the Institute of
Social and Economic Research Report and consequently the Federal Subsistence Board relied upon 10 year old data despite the availability of more current population statistics. The Federal Subsistence Board relied upon these outdated statistics despite the fact that updated data from the 2000 census were approximately a year away. Since population is a key element in the rural and non-rural process, the failure to acknowledge significant population growth seriously poisons the accuracy of the determination. Furthermore, the requesters assert that the Board failed to follow Federal regulations governing the rural determination process because the Board ignored the regulatory guidelines that presume a community to be non-rural if its population is more than 7,000, that it made no attempt to aggregate communities as required by regulations and that it used outdated population data and offered no explanation for its actions.

The Staff analysis of these claims associated with Issue No. 2 is summarized by the following:

Regulatory guidelines do require the use of the most recent available population data. The February 2000 Staff analysis used the most recent population data from the State of Alaska, Department of Labor and we have further updated the population data in the June 2001 Staff analysis associated with this request for reconsideration by including population data from the U.S. Census Bureau's 2000 census. Thus, the claim that the Board relied on 10 year old data in the ISER report does not appear to be supported by the administrative record as the Board had the most recent available population data for consideration.

The claim that the Board did not fully justify a rural determination for communities or areas greater than 7,000 may be arguable and therefore comes before the Board for further consideration. Finally, based upon the 2000 Census data, the population figures for the Kenai Peninsula aggregated areas are: The Kenai area 30,277, the Homer area 7,825 and the Seward area 3,204.

We now turn to the third issue regarding flawed methodology. Again, I will provide a summary of the claims int his case referenced as claims number 12 and 17 as submitted by the requesters as they relate to Issue No. 3, flawed methodology. The requesters assert: The Federal Subsistence Board's determination was based upon a method of analysis that the Board and its inter-Agency Staff Committee have both admitted to be flawed and in need of change. At the May 4, 2000 meeting, the majority of the inter-Agency Staff Committee recommended that a determination be deferred until the 2000 Census data and
revised rural determination criteria were available. Thus, the Federal Subsistence Board was aware of the inadequacies of the process at the time it made the Kenai determination, but chose to revise the rural determination process only after the Kenai determination had been made. The Federal Subsistence Board decision to revise the rural determination process in the context of its analysis of the Kenai rural determination shows that the Kenai determination should not have been made. Furthermore, the requesters continue as no factual and meaningful special circumstances for an out of cycle determination are found in the record. Requesters contend that any rural or non-rural determination of the Kenai Peninsula should be made in conjunction with the rest of Alaska and should be made only after the 2000 Census information is available and new analytical tools to determine rural and non-rural are available to the Federal Subsistence Board. And finally, the requesters state that the Board appears to be adopting new criteria by adding the criteria used by other Federal agencies without public notice.

The Staff analysis of the claims associated with Issue No. 3, flawed methodology, is summarized by the following: The February 2000 analysis carried out a reevaluation using the 1990 process without new criteria or indicators or introduction of weighted values on any of the criteria or indicators presented. It did emphasize the incompleteness of the analytical record and weakness in existing rural determination methodology. But until new methodology is developed, the Board applied a standard of review to the Kenai Peninsula communities that was consistent to the reviews conducted in 1990. Furthermore, the Board adopted the present methodology in 1990 and reaffirmed the use of this methodology for the out of cycle Kenai Peninsula review. Finally, in early 2000, the Board directed Staff to facilitate the development of an improved rural determination methodology. This process is underway using a third-party contracting process. However, the results of this new methodology, if one is developed and adopted by the Board will not be available until late 2002 or early 2003.

The claim that the Board introduced new criteria into the rural determination process without public notice may be arguable and therefore comes before the Board for further consideration.

And finally, Issue No. 4, ANILCA intent. Again, I will first summarize for the record, the claims referenced as number 7 and 14 as submitted by the
requesters relating to Issue No. 4, ANILCA intent. The requesters state: The Board ignored the models established by Congress and thereby ignored Congressional intent in designating rural and non-rural communities. The requesters assert that the Board should have compared the Kenai Peninsula with the communities that Congress designated as rural as well as the designated non-rural communities of Anchorage, Fairbanks, Juneau and Ketchikan. Furthermore, the requesters stated that the Board failed to compare the Kenai Peninsula with the rural characteristics of the communities of Saxman, Sitka and Kodiak which are referenced in its deliberations.

Staff analysis of the claims associated with Issue No. 4, ANILCA intent, indicates these claims are persuasive as there was not an evaluation in comparison of the Kenai Peninsula communities with the ANILCA intent communities in the February 2000 Staff analysis. We have provided this evaluation and assessment in the June 2001 Staff analysis for this request for reconsideration.

In the ANILCA Legislative record, the communities of Anchorage, Fairbanks, Juneau and Ketchikan were suggested by Congress as examples of non-rural communities. Barrow, Bethel, Dillingham, Kotzebue and Nome were identified as examples of rural communities. In the June 2001 Staff analysis, the population of the Kenai Peninsula communities were compared with these ANILCA-suggested communities for the years 1980, 1990 and year 2000. The Kenai Peninsula communities and areas were also evaluated using community characteristic indicators described in relation to the communities identified in the Legislative history of ANILCA along with the six communities contained in the ISER report and the Wasilla area.

A summary of the conclusions of the Staff analysis follows with these last three slides, whereby, three decision options are presented for Board consideration. As the Board is keenly aware, this analysis was challenging and difficult for Staff. Within the general public and the Federal land managing agencies, there are diverse opinions about whether the Kenai Peninsula should be considered rural for subsistence management purposes. And although the most recent available information and data is used in this Staff analysis, the data and information supporting the rural determination process has some limitations and can be viewed differently by parties with opposing viewpoints, the result of which can lead to opposing conclusions. In this
context, Staff provides the following three decision options for Board consideration and the supporting rationale for each of the three options.

Decision Option No. 1, would be to affirm the May 2000 decision that the entire Kenai Peninsula is rural. Analysis of the claims associated with Issue No. 1, aggregation, suggests that the aggregation for the Kenai Peninsula areas are valid and reasonable.

Our assessment of the claims associated with Issue No. 2, population and evaluation is that two of the aggregated areas have population levels above 7,000 and are presumed non-rural. The Kenai area has 30,277 people, the Homer area has 7,825. The Seward area with 3,204 falls into the 2,500 to 7,000 category where there is no presumption of rural or non-rural.

In the evaluation of community characteristics, overall, the three aggregated areas have mixed rural and non-rural characteristics similar to the ANILCA-suggested examples of non-rural communities and the communities identified in the ISER report of Kodiak and Sitka. For example, in the economic indicators, the Kenai and Homer areas are more similar to Kodiak and Sitka, both of which have been determined to be rural. The Seward area also parallels the ANILCA-suggested examples of rural communities.

In regards to the use of fish and wildlife, the limited data that is available indicates that the Kenai Peninsula communities have harvest levels similar to other road-connected rural communities.

For the claims associated with Issue No. 3, flawed methodology, it is the Staff conclusion that the Board adopted the present rural determination methodology through a public process in 1990 and has reaffirmed its use for the out of cycle review of the Kenai Peninsula communities.

And finally, in regards to the claims associated with Issue No. 4, ANILCA, it is the Staff assessment that some community characteristics of the Kenai Peninsula areas as compared to the ANILCA-suggested examples, along with other examples suggested by the requesters and ISER indicate that the three Kenai Peninsula areas are of a predominately rural nature and that the determination of the whole Kenai Peninsula as rural should be affirmed.
We now turn to Decision Option No. 2, which would rescind the May 2000 Kenai Peninsula rural determination. Analysis of the claims associated with Issue No. 1, aggregation, suggests that the aggregations for the Kenai Peninsula areas are valid and reasonable. This is the same assessment as for Decision Option No. 1.

Our assessment of the claims associated with Issue No. 2, population and evaluation is that two of the aggregated areas, again, have population levels above 7,000 and are presumed to be non-rural. As mentioned previously the Kenai area has 30,277 people and the Homer area 7,825. The Seward area with 3,204 falls into the 2,500 to 7,000 category where there is no presumption of rural or non-rural. Again, this the same assessment for Decision Option No. 1.

However, supporting rationale for Decision Option No. 2 diverges from Option No. 1 in regards to the assessment of community characteristics. All three of the aggregated areas have relatively well developed and diverse economies with employment and income patterns more similar to non-rural communities.

For the use of fish and wildlife, the per capita pounds harvested by Kenai is in the lowest 10 percentile of more than 150 Alaskan communities where such
areas are of a predominately non-rural in nature. Among the communities evaluated in this Staff analysis, Kenai ranks next to the lowest in per capita pounds harvested of fish and wildlife resources and is less than half of the amounts harvested by the ANILCA-suggested rural communities. For the community infrastructure and transportation indicators, these community characteristics more closely resemble non-rural communities than ANILCA-suggested rural communities.

In summary, it is the Staff conclusion that supporting rationale associated with Option No. 2 indicate that the three Kenai Peninsula areas are of a predominately non-rural nature and that the May 2000 Kenai rural determination should be rescinded.

And finally, the third Decision Option No. 3, would defer the request for reconsideration decision and delay any implementation of decisions relating to the May 2000 rural determinations of the Kenai Peninsula areas until completion of a refined methodology. It is the Staff assessment for this Decision Option, that a more defensible methodology for reviewing statewide rural determinations is being developed through a third-party contracting process and should be available when the complete 2000 socio-economic census data area available.

Rural determinations are among the most significant decisions made by the Federal Subsistence Board. In the present context, a decision to affirm or rescind the Kenai Peninsula rural determination would be made on the basis of what is viewed by some parties as problematic methodology. The Board will begin conducting the statewide review of rural determinations in late 2002 or early 2003 when the 2000 census data and the new methodology area available. With these considerations it would be better to withhold the decision for another year in order to make a determination that more accurately reflects the current Kenai Peninsula demographics.

Mr. Chair, this concludes my presentation of the Staff analysis and we are available to answer any questions.
now. The Alaska Department of Fish and Game and Anna 
Seidman on behalf of Safari Club International submitted 
written copies of their comments which they will present 
later on the agenda.

The original comments in full are part of 
the administrative record and copies of them are included 
in your packets. The Cooper Landing Fish and Game Advisory 
Committee, one of the requesters of this reconsideration 
supports Option 3, stating that it would be the same as 
their requested decision change, otherwise the committee 
would support Option 2 even though it is more stringent. 
They feel that adding 42,000 to the 8,000 that already have 
a rural determination does not protect subsistence and 
violates Title VIII.

Mr. John A. Nelson of Soldotna believes the 
Kenai Peninsula should retain its rural designation. He 
states that a subsistence priority and rural designation 
for the Kenai Peninsula are critical in establishing the 
use of fish as food for area residents.

Mr. Paul Zobeck of Soldotna states that 
nothing will create community unrest and hopelessness for 
the non-subsistence users faster than gillnets in the Kenai 
River. HE believes that there are better ways of 
resurrecting cultural tribe in the Kenaitze Tribe.

Mr. Don Johnson of Soldotna wrote to 
protest the use of subsistence gillnets and fishwheels in 
any Alaskan stream and believes the Kenai Peninsula fish 
cannot survive their use.

Mr. James Wilson of Soldotna thinks that 
the rural designation for Kenai Peninsula is ridiculous. 
Soldotna has more modern conveniences than many rural 
communities in the Lower 48 states.

Roxanne and Allen Mathewson of Soldotna 
believe that you should not allow a practice by many on the 
basis of its success for a handful. The legitimate 
concerns of the Kenaitze were appropriately compromised by 
the educational fishery now in place.

The Douglas Indian Association Tribal 
Government supports the Board's May 2000 designation of the 
Kenai Peninsula as rural and respectfully asks that you 
deny the request for reconsideration before you. They 
state that the population of the Kenai Peninsula should not 
be aggregated because the communities are dispersed and
consider themselves to be distinct, and that these communities, for the most part, were established in places that allowed the maximum opportunity for subsistence. They believe the rural determination process was fair, embraced the spirit of Title VIII and met the intent of Congress and that a reversal of the Board's prior decision would compromise the intent of Title VIII.

The Native American Rights Fund submitted a written comment on behalf of the Kenaitze Indian Tribe in the form of a 13-page letter which offers general comments and comments specific to each RFR claim and included a six page addendum. I have summarized their general comments and those specific to the claims, grouped by issue in the Staff analysis as follows: The Kenaitze Indian Tribe asks the Board to affirm its May 2000 decision. They believe the Board's decision was solidly founded, fair and just. They urge the Board to reject Option 3, noting that the Board has twice rejected efforts to defer this issue. In May 1999, the Board voted to reconsider the original Kenai Peninsula determinations and again in May 2000 it rejected the majority Staff's recommendation to defer a decision. Rural determinations are among the most significant decisions made by the Board therefore it is important that the parties be given a final decision. They also state that although the requests for reconsideration were timely they provided no new information and raised no new arguments that the Board failed to consider in the past. Of the 19 claims presented, the Staff analysis finds only seven warranted consideration and these were grouped into four issues. All of these issues were fully discussed and considered by the Board at the May 2000 meeting. While the lifestyle on the Kenai Peninsula is diverse it can generally be characterized as rural. Option 2 relies heavily on Kenai's low ranking in terms of per capita pounds harvested in an ADF&G survey of more than 150
1990 rural determination process used on the Kenai Peninsula using 1998 population data, not 10 year old data. The Department of Labor has now published year 2000 estimates, however, the relevant social and economic data will not be released prior to 2002 or 2003. It is clear that the Board was given the relevant population data and that it considered that data in making its decision to designate the Kenai Peninsula communities as rural. Claim No. 9, all of the information regarding the shortcomings in the data for aggregation was before the Board in May 2000, thus this claim should have been rejected as not meeting the threshold for reconsideration. The additional information brought to the Board through public testimony indicates that areas on the Kenai Peninsula possess significant characteristics of a rural nature. Claim No. 11, the Safari Club states that the record does not support a non-rural determination, however, the record includes more than the Staff analysis. It also the ISER report and addendum, public testimony and hundreds of pages of written public comment. The administrative record amply supports the Board’s decision as plainly indicated by the June 2001 Staff analysis. Claim No. 12, that the method of analysis used by the Board in making rural and non-rural determinations may be flawed does not do away with the Board's legal responsibility to provide for a rural priority under the existing Federal regulations. The Board is bound to apply the same criteria to the Kenai Peninsula communities that it applied in the rest of the state. Claims 13 and 14, the Tribe asks that their communities be evaluated under the criteria used by the Board for its initial determinations and that they be judged by those same standards. As was the case with Sitka, Kodiak and Saxman, the Board evaluated whether the Kenai Peninsula communities possess significant characteristics of a rural nature based on an evaluation of the area characteristics. The record fully supports the Board’s May 2000 evaluation and decision. Finally, the Tribe states that a rural Federal priority will not cause serious economic harm to the commercial and sportfishing industries or to the tourist industry, the marine waters of Cook Inlet where all commercial fishing and much of the sport and personal use fishing takes place are not under Federal jurisdiction and most of the rivers on the Kenai Peninsula are not within public lands. The current State personal use fisheries on the Kenai Peninsula are open to all Alaskans and these fisheries have not caused economic harm to the sportfishing industry.

Mr. Chairman, that's the conclusion of the summary.
CHAIRMAN DEMIENTIEFF: Thank you, Ann. And I also understand that you have the Southcentral Regional Council recommendation.

MS. WILKINSON: Thank you, Mr. Chairman. Chairman Lohse of the Southcentral Regional Council is unable to attend today's meeting due to a very recent death of a close friend. He asked me to make the following statement in his place on behalf of the Southcentral Regional Council.

And I quote: "The Southcentral Regional Advisory Council stands by its previous recommendation to the Federal Subsistence Board that the Kenai Peninsula should be designated rural for the purposes of subsistence management of fish and wildlife as authorized by Title VIII of ANILCA. We feel that by any standards and in any other part of the United States, the Kenai Peninsula would be considered rural."

CHAIRMAN DEMIENTIEFF: Thank you. I will now call on Peggy Fox for the Staff Committee recommendation.

MS. FOX: Thank you, Mr. Chair. I'm Peggy Fox, Deputy Assistant Regional Director for subsistence and Chair of the InterAgency Staff Committee.

The InterAgency Staff Committee first agreed that they would set aside Option 3, deferral, and focus on Options 1 and 2. All agreed that a final decision is needed on an issue that has been before the Board for several years. As to Options 1 and 2, the members voted on which option they preferred. I have summarized Staff Committee recommendations presenting the majority and minority viewpoints and as I present them, I will track with the analysis of the claims by referring to the four issues analyzed by Staff.

The majority of the Staff Committee members favored rescinding the May 2000 decision that all communities on the Kenai Peninsula are determined rural. On the claims regarding whether or not the Board appropriately followed its process specific to the aggregation step, the majority of the Staff committee is persuaded the claims have merit. The majority believes the aggregations made in 1990 for the Kenai Peninsula were, for the most part, valid and reasonable. The three aggregates, the Kenai area, the Homer area and the Seward area represented communities which were integrated economically,
socially and communally. Since 1990, the continued growth and development of these communities has increased their level of integration.

On the issue of whether population thresholds were appropriately applied ties back to the aggregation discussion. Based on the 2000 census figures on population, the Kenai and Homer areas exceed the 7,000 population threshold and are presumed non-rural. The Kenai area alone has more than 30,000 people, equal to the population of Juneau and twice the population of Ketchikan, both non-rural communities. Both the Kenai and Homer areas demonstrate high rates of population growth over the past decade indicating that they are continuing to grow further beyond the threshold of 7,000 identified in the regulations. The Seward area falls in the intermediate population category between 2,500 and 7,000, for which no presumption is made and for which the community characteristics are more decisive.

With regard to the third issue, the use of flawed methodology. The majority of the Staff Committee noted that the February 2000 analysis identified some weaknesses in the methodology used in 1990 to make rural determinations. Despite these weaknesses, there is no evidence to suggest that a better methodology or more data would result in a rural determination for all communities on the Kenai Peninsula. The three aggregated areas exhibit primarily non-rural characteristics.

The fourth issue, that the Board did not consider the intent of Congress in crafting ANILCA is compelling. All three areas have relatively well-developed and diverse economies with employment and income patterns more similar to non-rural communities. The three have relatively high rates of per capita income and generally moderate costs of living when compared to the ANILCA-suggested rural communities. Among the communities evaluated in the Staff analysis, Kenai ranks next to the lowest in per capita pounds of fish and wildlife harvested, harvesting less than half of the amounts harvested by ANILCA-suggested rural communities.

Evaluation of the merits of the claims led the majority of the Staff Committee to conclude that the three aggregated areas exhibit primarily non-rural characteristics and the May 2000 decisions that all communities on the Kenai Peninsula are rural should be rescinded.
The minority position on the Kenai Peninsula rural status took a different approach from the options presented in the Staff analysis.

The Staff Committee minority position is to support affirming the Board's designation of the entire Kenai Peninsula rural, however, the minority does not find any of the requests for reconsideration claims to have merit. Based on review of the Staff analysis, claims presented in the request for reconsideration to not appear to meet the reconsideration threshold established in the revised Board policy for RFRs.

Specifically, the requesters failed to provide information not previously considered by the Board that demonstrates the existing information is incorrect or that demonstrates that the Board's interpretation of information, applicable law or regulations is in error. Although the Board has accepted this request for reconsideration, it is evident, based on the Staff analysis that there is no new information before the Board to warrant reversal of the May 2000 decision.

The Staff minority support the public process as implemented by the Southcentral Regional Advisory Council which has, on three separate occasions, voted to recommend that the Board reclassify the entire Kenai Peninsula as rural. The primary purpose of the Board is to afford a subsistence priority use over other uses to those people dependent on that subsistence use. The public testimony presented to the Board indicated a clear and continuing subsistence need by the Kenaitze and other rural users on the Kenai Peninsula.

With regard to the issues of aggregation and flawed methodology, the minority position is that the process is flawed and that aggregation is not a necessary step. In 1990 the decision to aggregate 18 communities into three areas within the Kenai Peninsula was an important element in the Board's initial non-rural determination. In 1998, research conducted by ISER questioned the validity of the 1990 application of the criteria used to aggregate these communities and suggested that aggregation masked many rural characteristics. The minority position questions the validity of aggregation and disagrees with the current Staff analysis recommendation to aggregate Kenai communities. The analysis did not fully address the technical issues and concerns brought forth in the ISER report. In fact, the technical peer review of the February 2000 analysis expressed concerns about the
validity of the data for aggregation in 1990 and 1999
echoing those identified in the ISER report about the 1990
aggregations. The Board recognized that the information
used to establish non-rural areas on the Kenai did not
conclusively support the Staff majority recommendation and
based their May 2000 decision on several factors, not
population alone.

On the question of whether population
thresholds were appropriately applied, the minority
viewpoint is based on the assumption that aggregation is
not appropriate. In 1990 and 2000 no single community on
the Kenai Peninsula exceeded the 7,000 population threshold
to be presumed non-rural. According to Federal
regulations populations of 2,500 or less shall be deemed to
be rural, populations of 2,500 or above but not more than
7,000 will be determined rural or non-rural, populations
more than 7,000 shall be presumed non-rural unless such a
community or area possesses significant characteristics of
a rural nature. Based on Federal regulation and 2000
population census information, 11 of the 18 communities
within the three aggregation areas are rural. The seven
remaining communities fall between the 2,500 and 7,000
population range. For example, Kenai is at 6,942, Homer
3,946 and Seward at 2,830. The Ninth Circuit Court and the
ISER report, both, discuss the total Kenai Peninsula
population in relation to the area and suggest that based
on population density, regardless of aggregation, the
entire Kenai Peninsula is rural, and has a population
density similar to other areas of the state considered
rural.

It is clearly documented that population
figures alone are not the sole determinant of rural or non-
rural status. The Board must also consider other factors,
such as the fact that the State regulations have
systematically restricted subsistence uses and prohibited
subsistence altogether on the Kenai Peninsula since
statehood. These restrictions must be considered when
relying upon fish and game harvest data as a measure of
subsistence use on the Kenai Peninsula. When subsistence
is not recognized there can be no data showing subsistence
use or harvest. The State categories of personal use and
sports use are not considered as subsistence use and
therefore not counted as subsistence harvest. In addition,
as documented in the ISER report, subsistence users are
severely restricted by lost opportunity or competition from
non-local users. Finally, testimony to the Board
emphasized the time-depth and cultural significance of the
subsistence harvest traditions of the Kenaitze and other
rural residents on the Kenai Peninsula. In addition, Fish and Game, in their testimony, pointed out that they recognized the subsistence through cultural and educational permits.

These and other factors led the minority Staff to conclude that, although the lifestyle on the Kenai Peninsula is diverse, it can generally be characterized as rural.

Mr. Chair, that concludes my report.

CHAIRMAN DEMIENTIEFF: Thank you very much. Alaska Department of Fish and Game comments, Polly, is that you?

MS. WHEELER: Thank you, Mr. Chair. I'm Polly Wheeler with the Division of Subsistence, Department of Fish and Game and I'm co-Chair, along with Peggy Fox of the State and Federal MOA team. Dr. Jim Fall is here today, also with the Division of Subsistence, and he's going to provide the State comments.

DR. FALL: Thank you, Mr. Chairman, for the opportunity to testify before the Board this afternoon and to provide comments on behalf of the Department of Fish and Game, State of Alaska. I would refer to our written submission which is a letter from Commissioner Frank Rue to the Chair of the Federal Board dated June 21st, 2001, that has two attachments. One is an earlier letter that we submitted in August 29th of 2000 raising questions and comments about the Board's decision in May about rural and non-rural characterization of the Kenai Peninsula, and a second attachment contains more detailed comments on the Staff analysis.

These submissions are based upon numerous prior documents and testimony that the Department has provided you, for example, the testimony that we provided at the May 2000 Board of Fisheries meeting and a set of attachments to those written comments including extensive comments on the original Staff analysis from February 2000, the extensive Joint Board of Fisheries and Game findings regarding subsistence and non-subsistence areas in Alaska and Staff reports that were used to make those findings, which we suggest are very relevant for the process that the Federal Board uses. An earlier attachment was Technical Paper 61, Resource Use and Socio-Economic Systems Case Studies of Fishing and Hunting in Alaskan Communities, which is one of the Division's primary statements about
rural and non-rural characteristics in Alaska and is the primary basis of the theory of rural and non-rural communities in Alaska that we have developed over the last 20 years. An earlier attachment also that we draw on now was a Department of Labor 1999 report on the increasing diversification and strength of the Kenai Peninsula economy. And in addition, there were earlier letters on earlier phases of this process.

At this point we recommend the Board adopt Option 2, to rescind the May 2000 decision regarding the rural classification for all of the Kenai Peninsula Borough and await the development of a new methodology based upon their contracted research and the availability of updated data from the 2000 Federal census before making further adjustments to these classifications.

The rest of my comments, I'm not going to read our letter or anything like that, but I'd like to focus on four points that primarily emphasize what we think is critical here, which is a credible process that is data-based and a solid public record that illustrates how decisions were made.

Our first point pertains largely to Claim 17 as very usefully outlined by your Staff, and that's that the May decision did not follow existing regulations and adhere to a clear process. We note that the decision to classify the entire Kenai Peninsula Borough as rural basically was based on a rejection of the majority Staff Committee recommendation to make no change, which itself was based upon the Staff analysis. That Staff analysis followed very precisely the existing procedures that the Board is obligated by its own regulations and statutes to follow.

As an aside right now, we did want to make one comment on the minority Staff recommendation before you right now where we were a little puzzled to read that Federal regulations require that communities be reviewed by population and then aggregated, in other words, a view that classification occurs first and then aggregation. This is basically a reverse of the process that has been followed up until now and we would urge the Board to continue to follow the logical sequence of first identifying the communities that you are evaluating through aggregation process and then evaluate them with your rural/non-rural criteria.

The reason why we think that Claim 17 has
1 merit, is that, again, the recommendation that no change be
2 made was based upon the substantial information contained
3 in your Staff report. However, in rejecting that report,
4 the Board primarily cited the conclusions of other Federal
5 programs about rural classifications for Alaska communities
6 without discussion of these programs. In other words, the
7 Board, in our view, substituted new criteria without public
8 review of what these criteria are or what the purpose of
9 these particular programs is. This creates problems for
10 the public in understanding how decisions are being made
11 and makes the decision appear to be arbitrary.
12
13 The second comment that I wanted to
14 emphasize this afternoon primarily has to do with Claim 6,
15 which says that there was an almost exclusive reliance on
16 the ISER report in concluding that the entire Kenai
17 Peninsula was rural and the problem with the ISER report
18 and that it focused almost entirely on 1990 data and not
19 updated information. This reliance on that report
20 basically leads to ignoring relevant information including
21 the many submissions that we provided, including the Joint
22 Board analysis and Staff analysis connected with that, the
23 updated Department of Labor analysis on demography and
24 economy, and as well as the updated information in the
25 report from your own Staff.
26
27 The third point has to do with Claim 7, 14,
28 and Claim 16, in part, and again, relying almost
29 exclusively on the ISER report, there was an improper focus
30 or almost entire focus on limited comparisons with Sitka,
31 Saxman and Kodiak which are classified as rural and
32 classified as outside the non-rural subsistence areas by
33 the Joint Board, but only marginally so. The much more
34 appropriate comparison as pointed out in the Staff analysis
35 is with the communities stated as examples of rural places
36 in ANILCA Legislative history, namely, Barrow, Kotzebue,
37 Nome, Bethel and Dillingham.
38
39 The fourth point that I would like to talk
40 about a little bit has more to do with analysis of process
41 and data availability and building a solid record and it
42 goes to a comment we had on the Staff analysis. We thought
43 the updated Staff analysis is valuable. It's a valiant
44 effort to bring in new information but we did think that,
45 among other things, there was generally an undeveloped
46 discussion of fish and wildlife uses and harvest.....
47
48 (Telephone Connection Lost)
49
50 DR. FALL: .....information in that
analysis.

CHAIRMAN DEMIENTIEFF: Jim, can I get you
to pause, we just lost Anne Seidman and I'm sure she wants
to hear your report.

(Pause)

CHAIRMAN DEMIENTIEFF: We'll just stand at
ease for a moment.

(Pause)

CHAIRMAN DEMIENTIEFF: Okay, please sit
down, we've established our communication with Ms. Seidman.
And I'll just note for the record, as soon as it become
apparent that we lost you, we just had Mr. Fall stop in the
midst of his presentation, he'll now conclude.

DR. FALL: Thank you, Mr. Chairman. That
was actually a good place to take a break because I was
about to fumble with my papers. So thank you telephone
company or whoever did that.

The last point is I did want to urge the
Board to pay special attention to harvest information and
information about fish and wildlife uses. The Staff report
did include some updated tables with information regarding
this. We do think that a lot more could be done to
elucidate this -- to inform this process and to come up
with really solid decisions using the available information
about resource harvest and uses.

In our letter, we do cite an analysis that
we did in Technical Paper 253 that compares various
communities on the Kenai Peninsula regarding overall
harvest levels per capita and note that there is a
statistically significant difference between the
indisputedly rural places of Nanwalek and Port Graham and
Seldovia in comparison with the city of Kenai and Kenai can
certainly stand as a surrogate as a representative of
places nearby such as Soldotna and Sterling and Ridgeway.
This kind of analysis can be also made more broadly to
other communities throughout the state and we did site an
analysis we did for the Minerals Management Service
comparing communities in non-subsistence areas in Alaska
including the Kenai Peninsula with places that are
classified outside the non-subsistence area by the Joint
Board and again found that there is a very sharp
distinction between those communities in terms of harvest.
levels. Even communities that are rural along the road system, such as in the Copper Basin and in the Upper Tanana area, they have indeed suffered from competition and regulatory restrictions, still exhibit significantly higher levels of harvest than urban places reflecting their culture, their traditions, their economy, their economic needs.

A second point that wasn't as well developed, I think, in our letter as it could be, is that, it isn't just harvest levels that the analysis can focus on and use, but also such key indices of ruralness and subsistence use as the diversity of resource uses that occur in communities. And again, in Technical Paper 253, which by the way we did under contract for the Office of Subsistence Management, we also look at what we call at diet breadth or the average number of resources used by households in different communities in a particular year. And once again, Nanwalek and Port Graham stand-alone, really, in terms of that diversity with over 18 different kinds of resources used on average by household, and that's actually down a little bit from 10 years ago because of the Exxon Valdez Oil Spill. This is a significantly different measure or total than Kenai which is a little under seven different kinds. And this, again, is reflective of a variety of things. It's a reflective of culture, it's a reflective of traditions, it's reflective of the kinds of activities that people are engaged in over the course of a year, that harvest and uses structure, a season around activities. And instead in non-rural places, what we find is focus on a few resources, usually some salmon species, maybe halibut and moose activities that are not unimportant but are usually done in conjunction with breaks from work and is basically fitted into an economic schedule that is more structured by a cash economy and wage employment.

On this point, something that I decided I needed to add here, sort of at the last minute, is that we weren't given an opportunity -- or we did see this morning for the first time, the extensive comments prepared by the Native American Rights Foundation and I didn't have a chance to read everything that was in there but I took special interest in their points that were also brought up earlier in the summary related to the usefulness of harvest information. And on the second page of that document, the second full paragraph, there is a good point that's made, that harvest information needs to be evaluated in light of regulatory history and opportunity. Good point. We shouldn't take these number at face value without understanding history and context.
However, there is a puzzling statement that I think I do need to clear up because it's connected to our urging you to use this information. And it says in the middle of that statement, as ADF&G has pointed out in their studies, "the subsistence harvest levels of residents on the Kenai Peninsula must be assumed to have been artificially low at times of this study," referring to the study used in Technical Paper 61, "since regulatory changes over the past 30 years contributed to inconsistent harvest patterns." I was puzzled by this quotation because I was a contributor to this report and I asked our data management person, Charles Utomole, to do a text search to see where in that, rather thick, technical paper, that quotation was and it's not an accurate quotation of our position and really does misstate, I'm afraid, our conclusion in that technical paper. It is a little confusing the way the quotation marks appear in the paragraph, the second part, which says, "regulatory changes over the past 30 years contributed to inconsistent harvest patterns," I did find the quote that says "regulatory changes over the past several years have contributed to inconsistent harvest patterns by Ninilchik households." The context here has to do with inconsistent use of gear types. No question, in the early 1980s when we did this study, there was a flux in terms of gear that was allowed for harvest for home use. And what we found in Ninilchik is that when certain non-commercial setnet fisheries were closed, people had to turn to rod and reel, they turned to dipnets, they turned back to setnets, they turned to commercial harvest. So the context here is the source of salmon for home use, not the overall harvest levels.

The first part of the quote, which might just be a mistake, "that subsistence harvest of residents of the Kenai Peninsula must be assumed to have been artificially low at the time of this study," I asked Charles to do a search of artificially low in this technical paper as well as two others that I thought this quote might have come from and we didn't find it. And I think what might be, is that, that is not intended to be a quotation but basically a conclusion from the individual who prepared this submission about what regulatory restrictions might imply. But we did not conclude in Technical Paper 61 or in Technical Paper 106 that overall levels of harvest estimates for the Kenai Peninsula were misleading.

Also, I did note in that submission in the same paragraph the statement, "one only need to compare the subsistence use studies conducted for Seldovia and
Ninilchik, before those communities were designated as rural for purposes of Title VIII of ANILCA with ones conducted more recently after they were allowed to harvest fish and game for subsistence uses to see the impact regulatory restrictions can have on subsistence users ability to harvest fish and game," again this is citing our studies. I'm a little puzzled and I'd actually appreciate some clarification on the Seldovia portion of that. There's no evidence that regulatory changes related to the rural/non-rural classification for Seldovia have any impact on their harvest levels. We did discover increased harvest levels in Seldovia in the 1990s compared to earlier in the '80s and in our reports to MMS we offered several suggestions, solid suggestions, I think, for why that happened. It was not related to rural and non-rural classification. For Ninilchik, again, in Technical Paper 253, we did, indeed, document a notable increase in harvest, however we also looked at how the classification of rural and non-rural for Ninilchik might have been related to that increase and we rejected it as a cause. There was no evidence that the increasing moose harvest in Ninilchik was at all related to harvest on Federal lands, the increases in halibut use there probably related to increased charter -- use of charter boats and businesses there that people can take advantage of, and certainly the personal use dipnet fishery established since the area has been -- or largely established since the area has been classified as non-subsistence contributes to some increases in harvest levels, still significantly lower than Nanwalek and Port Graham despite these increasing opportunities. And that's pretty much it. So just to conclude our testimony, we conclude that the administrative record before the Board and the subsequent Staff analysis, including the most recent analysis, support the claims or at least some of the claims of the request for reconsideration that the May 2000 decision to classify the entire Kenai Peninsula as rural was not supported by the process, use of the process and not supported by the available evidence.

We would urge the Board to adopt Option 2, rescind the action from May 2000 and reconsider the entire Kenai Peninsula, once you have established a new methodology and have access to the full results of the 2000 census.

Thank you very much, Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Thank you. Before
we begin public testimony, I'd just want to note that the
Board has spent significant time on this issue. We've had
past hearings in the past, we exhaustively went through all
the Staff analysis and met as recent as yesterday afternoon
and even this morning to get late written public testimony
read and analyzed and discussed. So the Board has done
diligence as far as working this issue, and I don't know
how many Board meetings it's been on the agenda. So I feel
very strongly that we're prepared, once we complete public
testimony here today, that the Board has prepared itself to
make a decision. So we have done diligence.

Toward that end, as we move into public
testimony, I'm going to call on Safari, Cooper Landing Fish
and Game Advisory Committee and NARF, and I'm going to
allow them five minutes for testimony. Once we are
completed with those three then NARF, in this case is
representing the Kenaitzes, then when we get to public
testimony, I'm going to limit public testimony to three
minutes, three minutes each. So with that, I'll call on
Ann Seidman.

MS. SEIDMAN: Yes, thank you, Mr. Chairman.
Good afternoon. My name is Anne Seidman and I represent
Safari Club International, two of its Alaska chapters and
the Kenai Peninsula Outdoors Council who have joined
together to file a request for reconsideration of the
Federal Subsistence Board's rural determination for the
Kenai Peninsula. I wish to thank the Board for permitting
me to participate today by telephone. I'm honored to be
able to take part in this historic determination.

Our position is very simple, the Kenai
Peninsula is not a rural area. According to Federal
regulation, the rural designation process must start with
aggregation. The Board ignored this requirement in making
its determination in May of 2000. In its recent analysis,
the majority of the InterAgency Staff Committee properly
aggregated the Kenai Peninsula areas of Kenai, Homer and
Seward before considering population and community
characteristics. The minority Staff Committee and the
Native American Rights Fund have recently suggested that
where aggregation is appropriate it is not to be done
first. Presumably, the minority Staff Committee and the
Fund offer these interpretations of the rural determination
regulations simply because the direction to aggregate
appears in the regulation after the words, population and
community characteristics. Their reasoning is flawed.
Aggregation can serve no purpose if it is to be performed
only after population is assessed and community
characteristics are examined.

The most important rules of statutory interpretation require that each provision of a law be interpreted in a way that gives it purpose and that makes sense in the context of the entire statutes. Aggregation clearly must take place first. Upon aggregating these areas, Federal regulation requires that the Board must use the most recent population figures available to assess these areas. The Board did not comply with this requirement. They considered outdated population figures and refused to wait for the results of the most recent census. Because figures from Census 2000 are now available, the Staff Committee could incorporate this more accurate population data into their recent analysis. These statistics reveal more than simple population totals. First of all, the new figures indicate that now both the Kenai area and the Homer area have aggregated population totals that, in accordance with Federal regulation, place these areas in the category of presumed non-rural communities.

Moreover, the growth of these areas shows an important trend. Since 1990, the Kenai area has grown by 46.8 percent, the Homer area by 23.9 percent and the Seward area by 10.3 percent. This data indicates that each of these aggregated communities continues to move farther in the direction of a non-rural as opposed to a rural classification. Faced with these sorts of numbers, the Federal Subsistence Board was obligated to analyze the community characteristics of the aggregated Seward area to determine whether there was convincing evidence of a rural community. For Kenai and Homer, the Board was permitted to consider whether there was evidence sufficiently significant to overcome the non-rural presumption. The Board did not follow these requirements. They considered data about individual communities and afforded inappropriate weight to anecdotal testimony about the experiences of individuals.

In the recent analysis, the majority of the Staff Committee appropriately aggregated and considered the studies of the community characteristics of these aggregated areas. They concluded that not only were the areas primarily non-rural back in 1990 but that "since that time circumstances such as population growth and economic development have significantly accentuated the non-rural aspects of these areas."

In May 2000 the majority of the Board
members ignored required criteria and the weight of the evidence. Mr. Caplan, for example, voted for a rural determination although his explanation supported the non-rural designation. He acknowledged the aggregation of the Kenai communities as appropriate. He also distinguished the Kenai from the communities of Saxman, Sitka and Kodiak, recognizing that unlike the Native populations of these redesignated rural communities, the Kenaitzes do not form a distinct enclave within the Kenai Peninsula. The only factual basis that Mr. Caplan cited in support of his rural vote was the ISER report, a report that Mr. Caplan himself acknowledged to be in violation of the rural designation methodology established by Federal regulation.

Chairman Demientieff concurred stating that his vote was based upon most of the same reasoning as that offered by Mr. Caplan.

Mr. Cesar and Mr. Cherry offered nothing in the way of factual support for their vote. They indicated that their votes were primarily motivated by their concern for the impatience of the Kenaitze people.

The Board members who voted for the rural designation did not base their votes on factual evidence or on the criteria and methodology established by Federal law. Had they relied upon the correct data and procedure, they would have had no choice but to find the Kenai non-rural. Consequently, as we have stated in our formal RFR, we now ask the Board to return the Kenai to its proper non-rural status.

Thank you.

CHAIRMAN DEMIENTIEFF: Thank you, Ms. Seidman. Bill Stockwell, from Cooper Landing Fish and Game Advisory Committee.

MR. STOCKWELL: Mr. Chairman, Board members, Staff, members of the public. My name's Bill Stockwell and I'm Chairman of the Cooper Landing Advisory Committee.

Thank you for accepting our request for reconsideration of the Kenai rural determination. I would like to state clearly that our argument is not with the makers of this rural determination proposal or their supports, the Staff, the agencies, the Regional Council or the members of this Board. In our opinion, all parties to this proceeding have acted honorably and in their best
interest. Our disagreement is strictly with the May 2000
decision.

This decision was made with the best of
meaning and intent, but was made with incomplete and out of
date data, poorly-defined methodology, biased research and
thus lacked merit and created poor public policy. We ask
you now to change that decision.

You have our written comments and testimony
at the May 2000 meeting, our request for reconsideration
and our written comments on the June 2001 Staff analysis.
Consistently we have asked that this out of cycle decision
be postponed until the required statewide rural
determination is made after the 2000 Census. This review
will compare the entire state of Alaska including Cooper
Landing and the Kenai Peninsula. This is the only fair and
proper procedure.

The Cooper Landing Advisory Committee has
nothing new that we can add to our argument or to the
record, you have all the information we can supply. We ask
that you carefully consider our past written and oral
comments. We agree with the majority Staff position. We
ask that you rescind the Kenai rural determination until
you have new methodology and can conduct this Kenai
Peninsula rural determination along with the required
statewide determination.

Thank you very much for considering our
request and I'm available for any questions that anybody
has. Thank you.

CHAIRMAN DEMIENTIEFF: Yes, sir. If we did
take Option 3, you realize, of course, then the Kenai would
remain rural until we considered it.

MR. STOCKWELL: I guess I missed that,
well, you'd be postponing -- if it remained rural but you
would be postponing any decisions on the uses of fish and
wildlife on the Kenai until such time as a final decision
was made. I believe that's the way it's stated in the
Staff report because Ms. Fox stated clearly that the Staff
was no longer considering Option 3, then we support Option
2 as the proper procedure at this time and we ask you to
take up Option 2 and make that your decision.

CHAIRMAN DEMIENTIEFF: Peggy, is there
anything in the Staff Committee report that I missed that
says that we would also defer consideration of regulations
1 because my understanding is that.....
2
3 MR. BOYD: No, it's in the Staff Committee.....
4
5 MR. STOCKWELL: Excuse me, maybe I misread the Staff report, which is quite possible. Any
6 implementation of decisions relating to the May 2000 rural determination areas upon completion of the refined methodology, which I assumed meant delays on any further implementation of deferred proposals that are being -- that are out there of which there is customary and traditional use proposals for, both, wildlife and fish and a couple of others, too, and my assumption was that those were -- that that whole thing would be deferred. If I'm wrong, then I won't -- then I'll take back our support of Option 3 and we will support Option 2.

8 CHAIRMAN DEMIENTIEFF: Peggy.
9
10 MS. FOX: I just did a quick scan here, I don't see that in here that the action on the proposals would be deferred. But, in point of fact, it just isn't addressed at all so it would be a subsequent decision that the Board would need to make.

13 CHAIRMAN DEMIENTIEFF: Oh, okay. Gary.
14
15 MR. EDWARDS: Mr. Chairman, in looking at Option 3, I think it does clearly say that any implementation of decisions relating to the May 2000 rural definition will not be delayed until such time. So the Option 3 specifically says that, is the way I read it.

19 CHAIRMAN DEMIENTIEFF: Yes.
20
21 MR. STOCKWELL: Also in the paragraph on the top of the other page, it says, the review of the statewide determination will begin -- the determination will involve the rural Councils and so on and so.....
22
23 MR. EDWARDS: It's in the heading itself of the option.
24
25 MR. STOCKWELL: Any how, at this time we'll withdraw our support of Option 3 and accept Option 2.
26
27 MS. FOX: I'm sorry, it does say that.
28
29 CHAIRMAN DEMIENTIEFF: Okay, thank you very
much. Carol Daniel, attorney for the Kenaitze Tribe, if
there's no further questions?

MR. STOCKWELL: Thank you very much.

CHAIRMAN DEMIENTIEFF: Thank you.

MS. DANIEL: Thank you, Mr. Chairman, Board
members. My name is Carol Daniel and I'm here to testify
on behalf of the Kenaitze Indian Tribe. And in my
testimony I wish to strongly urge the Board to adopt Option
1, which affirms the Board's May 2000 decision to classify
all communities on the Kenai Peninsula as rural for
purposes of Title VIII of ANILCA and for the reasons
outlined in the minority Staff report or recommendation.

We've submitted extensive testimony and
written comments on this issue over the last couple of
years and I would refer the Board back to those comments
and not belabor the point here. I would point out that in
our most recent comments, we failed to attach as an
exhibit, a two page letter from Dr. Jack Cruse of ISER
dated August 17, 2000, which specifically responded to the
two requests for reconsideration and I have asked that that
be passed to the Board members. (Attached)

We also would like to urge the Board to not
defer this decision. The Board has, twice, considered that
as an option and refused to defer consideration of the
Kenaitze's request to change the classification from non-
rural to rural, and I would just say that after the many
years of public hearing and participation on the part of
the Kenaitze and the Board, itself, that the parties
deserve an answer, they deserve a final decision and I
think it would be unfair to prolong this process. If the
new data and new methodology prove that things need to be
changed it can be changed along with all the other
communities in the state at the time that the Federal
Subsistence Board makes that evaluation.

One point, I don't have time in five
minutes to address everything, but I would like to address
specifically the use of fish and wildlife on the Kenai
Peninsula. In terms of the use of fish and wildlife, that
plays heavily into the reasoning for Option 2 in finding
the recommendation that the Kenai Peninsula communities
don't meet characteristics of rural communities. And I
would just point out and I think it was pointed out in the
minority Staff recommendation that the Kenai Peninsula has
been the most heavily regulated area probably in the state
in terms of subsistence and even personal use fisheries. In the mid-1970s, the State adopted a management plan for that area that it basically allocated all the fish to sport and commercial fishermen. And to say that the same harvest levels would be indicated in studies in areas where people are not allowed to go out and hunt and fish for subsistence uses, I think is born out in the studies. I would say that in the quote that Dr. Fall pointed out in our comments, he's correct that the quotation mark was off, we've submitted that same comment in previous comments to the Board and basically our point is that the harvest levels, at the time those studies were made, were under-estimated or artificially low because of the regulations that were in place regulating the times, places that subsistence users were allowed to hunt and fish. But I would point out that Jim Fall asked a question about the comparison on Seldovia and Ninilchik, briefly, Dr. Fall testified at the Joint Boards of Fisheries and Game in November of 1992 [sic] concerning the harvest levels of, both, Seldovia and Ninilchik. And I would just point out that the harvest level for Ninilchik, under that 1982 [sic] study which is relied on in some of the previous testimony to show a low harvest level, that study reflected a harvest level for Ninilchik of only 76 pounds and then a subsequent study, the 1993 study reflected a harvest level of 163.4 pounds. And the 1993 figures was after Ninilchik was determined to be rural.

CHAIRMAN DEMIENTIEFF: Ms. Daniel, your time is up, if you'd quickly summarize.

MS. DANIEL: We would just urge the Board to read our written submission and to adopt Option 1 in accordance with the analysis and reasoning of the minority Staff position or recommendation.

Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. David Donald.

MR. DONALD: Good afternoon, Mr. Chairman, Board members. Thank you for providing this opportunity. My name is David N. Donald. I live at 47425 Augusta National, which is between Kenai and Soldotna, mail address P.O. Box 1498, Soldotna. I represent the Kenai Peninsula chapter of Safari Club International. We have 137 members approximately.

I live about 200 yards from a paved road
and this paved road leads to all town except those across Kachemak Bay. Thirty years ago we had to drive to Anchorage for our Christmas shopping, now, Kenai has a K-Mart, Soldotna has a Fred Meyer, both towns have many stores, Homer even has a McDonalds. We won't talk about the fast food places in Soldotna because we've got too many of them. It's even possible for a hunter, on his way home, to dial on his cell phone and have a warm pizza waiting for him at home, after a hard day's hunt. The Kenai Peninsula has a good road system all of which is covered by EMS in the event you need them and much of the area has fire protection. We have people who live in Soldotna and work in Kenai, Nikiski and the Slope. People live all over and they work all over because it's easy to get around on the Kenai Peninsula. I see people from Ninilchik, Anchor Point and Homer shopping in Soldotna every week. The Kenai airport has more scheduled flights than any town of its size. I can leave my house and be in Korea in 12 hours, I can be in Europe in 18 hours, and I can be in Seattle in eight hours. I can leave my home in the morning and be having a beer on a beach in Mexico that afternoon. We have an industrial complex that most areas this side would love to have. We have two prisons and are talking about building a third prison. During lunch, today, I read where the Aspen Hotel Group is breaking ground for a 63-room hotel in Soldotna, conference rooms, spa and swimming pool.

Each year we are growing more, which some people say is bad. The census shows that they were all up in all three areas and I won't bother to repeat that because that's been discussed quite a bit. But our population is up.

We, on the Kenai have a wonderful life. We live in an urban setting, which is growing all the time. We have an abundance of fish and wildlife. In-state and out of state tourists flock to this area for vacation using our great roads. I do not see how anybody can see we are a rural area, all you have to do is look around. We're not a rural area and we support Option No. 2.

Thank you very much.

CHAIRMAN DEMIENTIEFF: Thank you. Mary Ann Mills.

MS. MILLS: My name is Mary Ann Mills and I reside on the Kenai Peninsula and I am one of many Den'ina, whose homeland is the Kenai Peninsula.
The Federal Subsistence Board has already made a fair and just ruling with regard to the rural determination and I request this Board to stay to your word and to affirm the May 2000 decision by adopting Option 1. The laws provide subsistence as first priority over any other fishery, however, for numerous years the State of Alaska has blatantly implemented regulations that are inconsistent with State and Federal law. This has affected thousands of people living on the Kenai Peninsula without any consideration or compensation. Article VIII of ANILCA was supposedly to right the wrong of ANCSA with at least regards to subsistence. Congress declared in Title VIII that the opportunity for subsistence uses by Alaskan Natives is essential to Native physical, economic, traditional and cultural existence. Title IX of ANILCA includes the Federal government's trust responsibility to protect the inherent valid and existing rights of Alaska's indigenous people and which a subsistence preference can be accomplished by using the rationale found in Morton v. Mancarrey. Legal issues and Federal protection for subsistence on the proposed National Interest Lands by Dennis Kelso states: Under the Mancarrey reasoning, no Fifth Amendment due process violation would be found. Arguably subsistence preference is directed towards fulfilling the Federal trust responsibility on several interlocking basis. Subsistence as a vehicle for a free cultural choice, subsistence priority would allow Alaskan Natives living near the National Interest Lands to choose the extent that elements of traditional culture will be retained as competition from urban-based cultural lifestyles increases. This would provide a setting in which retention and act of practice of Native heritage would not be penalized or reduced by outside pressures. Special subsistence privileges would thus aim towards maximizing Natives self-determination by assuring continued availability of cultural choice. Termination of subsistence practices on National Interest Lands would certainly force Natives to abandon traditional ways. In the absence of Federal protection, the cultural roots of people to whom the Federal government owes special duty will be eroded, subsistence as a tool for successful transition. If the resources on the National Interest lands are not reserved for those people who have traditionally used the land for subsistence purposes, the potential accommodation between old ways and new is immediately foreclosed. The Federal government has the opportunity to assure that subsistence users may evolve in their own combination of cultural elements creating the climate in which a self-determination....
CHAIRMAN DEMIENTIEFF: Could you please summarize, your time is up?

MS. MILLS: Okay. As a prerequisite for statehood, Alaska had to accept the disclaimer clause in its Constitution, Article XII, Section XII, in which the state and its people forever disclaim all rights and titles. Subsistence is more than an urban/rural issue.....

CHAIRMAN DEMIENTIEFF: Maybe you could state your position, your time is up.

MS. MILLS: Okay. I would just like to state that I hope that you adopt and stand by your word for Option 1 and I'd like to go on record that I have never relinquished any of my rights and I stand firm and I'd like to go on record that basic sacred fundamental human rights are not negotiable.

Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. Judging apparently having a problem finding them but I should have announced, that the forms are available at the front desk. If there are those of you that may have time problems, got to catch a flight or something, please try to let us know and we'll try to accommodate you to the best of our ability. Mary Lou Bottorff.

MS. JULIUSSEN: My name is Bonnie Juliussen, Mary Lou had to leave for another appointment. She asked me to read this for her.

CHAIRMAN DEMIENTIEFF: Yes.

MS. JULIUSSEN: My name is Mary Lou Bottorff of the Kenaitze Indian Tribe. I am an elder in the tribe. I have fished, hunted, gathered greens, et cetera, on the Kenai Peninsula since 1972, taught my sons, I also able to teach my grandchildren the same uses of the water and the land and food gathering. I am asking you, the Federal Board, to please consider Option 1, affirm the May 2000 decision that the entire Kenai Peninsula is rural.

CHAIRMAN DEMIENTIEFF: Do you have comments for yourself or is that yours, too?

MS. JULIUSSEN: Yes, I do. I am in support of Option 1, to keep the rural designation on the Kenai
Peninsula. I am also a Kenaitze tribal member. My family has been here for years and we need to keep our customs and traditions for our children and our children to come.

Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. Rosalie Tepp.

MS. TEPP: (In Native) Good afternoon, Mr. Chairman and other Board members. My name is Rosalie Tepp. I am the Chairperson of the Kenaitze Indian Tribe and as such, represent 1,149 Kenaitze tribal members.

The Safari Club International, the Alaska Chapter of Safari Club International and the Kenai Peninsula Chapter of Safari Club International talk about conservation, wildlife protection of the hunter and educating the public. Members of this organization hunt, fish and otherwise enjoy the wildlife that populate the public lands of the Kenai Peninsula. We, the Kenaitze people, are asking for the same thing. We ask to preserve our way of life, our subsistence lifestyle. It is documented fact that there has been a constant as well as a continuous use and the dependence among the Den'ina people. When we subsist we leave behind enough for the following year and years to come. The act of subsisting is also a form of preserving foods for years to come. We don't take any more needed and waste any foods of any resource. So what these people are asking is nothing new, it's just -- excuse me -- is nothing new, it's like asking to preserve our way of life. And I'll quote our former tribal Chairperson, Claire Swan, drying fish, smoking fish, berrypicking persisted over the years without any direct relationship to size of income. Traditional and customary use of the resource continue. I, myself, have never let the size of my income affect my subsistence way of lifestyle. Just because I pay my bills doesn't mean I quit eating fish, seal oil, et cetera.

The Tribe has never wanted to exclude our other users from subsistence use. The Federal Subsistence Board rural designation will protect the viability of species on the Kenai Peninsula by limiting the pool of users of the resource. The potential excess would be for residents versus non-residents, commercial, sportsfishermen, hunters and commercial guides. I urge the Federal Subsistence Board to uphold the rural designation for the Kenai Peninsula, which is Option No. 1.
CHAIRMAN DEMIENTIEFF: Thank you.

MS. TEPP: Thank you.

CHAIRMAN DEMIENTIEFF: Mr. Paul Swetzof has a time conflict. Again, those of you that find yourselves running out of time just let the front table know and they'll get word to us. I'm going to call on Paul Swetzof at this time.

MR. SWETZOF: Thank you, Mitch. I sort of snuck out of work to get here so I appreciate the opportunity to speak real fast. I'm not going to bore you with statistics and that. I live in Anchorage and I'm speaking for myself, I'm also a Kenaitze member and I'm also a member of a lot of other things, Sled Dog Racing Association, other things like that.

I just want to say that I'm in support of Option 1, to affirm your decision. I think that enough promises have been broken over the years and I think that the Kenai Peninsula, I don't know what designation you would call it except for rural. Yeah, if you live in Kwethluk, you could be in the Orient, too, in eight hours, you know, you can take a little plane over and be in Anchorage in a couple of hours and fly over to the Orient. If you live in Nenana or Tanana, you know, what can you do there, Mitch, you can take a boat on up the river and be at the Fairbanks airport and you can be on the East Coast in six or seven hours, you know, I think that that's not a very good argument.

The Safari Club has an interest and their interests should certainly be considered. Their interest is they don't like subsistence, they don't believe in it. They have their own sportfishing interests and that's fine, that's their right. They're opposed to it on any account and so they're here arguing against a rural preference. They're arguing against a rural preference statewide.

The people in Cooper Landing, I have a lot of respect for, they're not here to talk about subsistence, they're here to talk about another legitimate subject, which is economic legitimacy. They don't want to lose tourists, they don't want to lose people, they're afraid they might. They got a legitimate interest but I don't think it has anything to do with the subsistence interests that we have.

If you're somebody that's coming in as a
visitor from New York City or something, you're coming here to visit, you come into Anchorage you're in an urban area, right, and then you drive down the road and you get to the Kenai, what's the first thing you say, you say, oh, another big city? No you don't say that. Any place else in the country you would say the Kenai is a rural area, I don't care what part of the Kenai you go to. A lot of the people on the Kenai, the statistics are a little off because as we all know, a lot of the folks that claim residency on the Kenai are only there eight or nine months out of the year. You want to take a look at Homer, take a look at Homer in the summer and take a look at Homer in the winter, there aren't 4,000 people there in the wintertime, they're off in other places. I don't know where they go but they're not there.

The Kenai Peninsula, I think, by any standard, by anyone's objective standard is a rural area. Maybe one day it will be a city, maybe one day Kenai will really be a city, I don't know, but right now it's not and I urge you strongly to support -- I mean the other thing that I wanted to mention is that, you know, you don't always look at this but maybe it's something to stick in the back of your heads that, you know, a community like the Kenaitze have been surrounded by other people and that's happened in quite a few places, including Unalaska, including Bethel, including Ketchikan, a lot of places statewide, but they are a community even though they're spread out, they're a community within a community and they've got a cultural claim which I think needs to be respected and looked at.

CHAIRMAN DEMIENTIEFF: Your time is up, please summarize.

MR. SWETZOF: So in summary, I just want to say in my unprepared remarks is that I urge you to keep the promise and continue in support of Option 1 and I thank you a whole lot for you guys considering our comments.

Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. James Showalter.

MR. SHOWALTER: Good afternoon. My name is James Showalter. Throughout all these testimonies, been running down through numbers of the Kenai Peninsula and the census numbers and aggregation of the communities.
As to aggregation, I feel that's not right, isn't right and shouldn't be done. Just because a person works in one place and has to drive from 10 to 30 miles away to get to work. Anyway, with the numbers of the cities listed and there's a number of people and families that can say that the Kenai Peninsula is not rural, with these small numbers versus Anchorage, Juneau, Fairbanks and a few other cities, now, there are two groups that want this change from rural back to non-rural, this is a special interest group for sportsfishing and sports hunting. We are not sports hunting or sportsfishermen, we are subsistence fishermen and hunters. And they do this for these big dollars. They advertise the Kenai River, the Kenai Peninsula as rural, and then they get all these people in. And as was indicated earlier, these summer months the whole Kenai Peninsula, the Peninsula almost sinks with people, come fall, they're gone again.

Anyway, so subsistence, in both State and Federal law, Alaska, the citizens support protecting subsistence under both Federal and State law. So that's about all I have right now.

I urge you to support Option No. 1 by your previous voting and I thank you.

CHAIRMAN DEMIENTIEFF: Thank you. Rita Smagge.

MS. SMAGGE: Good afternoon. Excuse me, I'm nervous. Good afternoon, Mr. Chairman and Board members. My name is Rita Smagge. I'm a Kenaitze tribal member and also the Executive Director for the Kenaitze Indian Tribe.

On May 4th, 2000 when the Federal Subsistence Board decided in favor of the rural designation for the entire Kenai Peninsula, the tribal members that were present were speechless, we weren't sure that we had heard correctly. When it finally sunk in that we had "won," we were elated and thanked God for his blessing. We also knew that this was not the end of our battle, but only the beginning. Unfortunately the Safari Club International and the Cooper Landing Fish and Game Advisory Committee filed requests for reconsideration and subsequently the Federal Subsistence Board determined there was enough merit to the requests to set the hearing for reconsideration after the 2000 census, and that's why we're here, again, today.
In my opinion, the request for reconsideration offered no new evidence and should have been denied by the Federal Subsistence Board. Although, I cannot address all of the claims cited, I would like to address the following, Claim 4. The non-rural designation of the Kenai Peninsula did not deprive Native subsistence hunters of their opportunity to practice and to teach their subsistence hunting traditions. My response: I strongly disagree. The Tribe has not been able to maintain its subsistence lifestyle because of the restrictions that have been placed on subsistence starting in 1941 when 1,730,000 acres were removed to establish the Kenai National Moose Range and hunting ceased to be a way of life, and in 1956 when the subsistence nets were barred in the Kenai River. The educational fishery should not be considered subsistence, it is what it is, educational.

Claim 6, the ISER report and consequently the Federal Subsistence Board relied upon 10 year old data despite the availability of more current population statistics. The Federal Subsistence Board was more than conciliatory when they agreed to reconsider and set the hearing for after the 2000 census information was released. I have seen some of the 2000 population figures of the Kenai Peninsula Borough and it appears that the 10 year population growth, overall is very minimal and not dramatic as stated. However, there appears to be a significant growth in the Native population in the tribe's service delivery area. Aggregation of communities should not be allowed because it does not accurately reflect the rural/non-rural characteristics of the individual community. Each community has its own boundaries, local governing bodies, councils, schools, libraries and culture, that makes it unique and distinct.

Although communities may appear to have all the "modern hi-tech conveniences," if you take a closer look.....

CHAIRMAN DEMIENTIEFF: Would you please summarize, your time is up.

MS. SMAGGE: Yes. I would just urge the Federal Subsistence Board to uphold the rural designation for the Kenai Peninsula.

CHAIRMAN DEMIENTIEFF: Thank you very much.

MS. SMAGGE: Thank you.
CHAIRMAN DEMIENTIEFF: Justine Polzin.

MS. POLZIN: Good afternoon, Mr. Chairman and Board members. My name is Justine Polzin and I'm here representing the Soldotna Chamber of Commerce.

The Greater Soldotna Chamber of Commerce represents 650 businesses and individuals. Approximately 50,000 people under a rural subsistence designation. The reality is that 90 percent of us have a school bus that can pick up and deliver our children to school. We're within an hour's drive from a major city, which includes Kenai, Soldotna, Homer and Seward. Less than three hours drive from Anchorage. We can have a pizza delivered to our door. We have access to a variety of shopping in our community and easy access to health and government services. This area is not rural and should not be classified as having a subsistence preference.

A rural subsistence designation for the Kenai Peninsula will have a major impact on the economic base of the area. Businesses in the area from Homer to Seward and through the central Peninsula, including Soldotna, Kenai and other communities are dependent on access to the resources by locals, in-state residents and out of state visitors. A majority sector of our economy has grown around sport and commercial fishing. Businesses from lodging, fishing guides, commercial fishermen, fish processors, restaurants, retailers, gas and service stations will all be directly impacted. This effect will flow downstream to impact the construction, government and support areas of the economy. Clearly by designating the Kenai Peninsula as a rural subsistence priority area, you will, in deed, create more people reliant on subsistence by necessity because their current livelihood will be diminished.

The land on the Kenai Peninsula has provided a long and sustainable resource for all to use. Many businesses on the Kenai currently make their living off of the land. A hotel, lodge or B&B puts up guests that have come to share in the bounty and the beauty of the land. Fishing and hunting guides make a living from the land by providing
their clients with equipment and the knowledge to enjoy the sustainable resources of the area. A commercial fishing family harvests the bounties of the water to provide an income for their family. Each of these areas generates income that circulates through the local economy to provide jobs and a quality of life for all residents of the Kenai Peninsula. The sustainable use of our resources has been and is available to all residents of the Kenai Peninsula as well as visitors to our area. We would like to see this continue through the continuance of good management practices with a priority being given to sustainable uses that benefit our people, businesses and communities.

Today I ask that you do not designate the Kenai Peninsula as rural for the purposes of establishing a rural subsistence priority. As you have heard, subsistence for the Kenai is more than a matter of people being able to gather and live off of the land as individuals, it is a matter of access to the resources by all that will allow our people and communities to continue to survive in the future. Once again, we ask that you do not designate the Kenai Peninsula as rural for the purpose of establishing a subsistence priority of our resources.

Thank you for your careful consideration of this very important matter that affects all of us.

CHAIRMAN DEMIENTIEFF: Thank you. Amanda Sonju.

MS. SONJU: Thank you for listening to my testimony. I am in favor for Option 1.

I am all for subsistence. I get upset when all I hear is sportfishing. And we run an educational net, that is not subsistence. I am a tribal advocate for the Kenaitze Indian Tribe and I am a part of running that educational net and working with youth. It is sad to see that we have to live our subsistence life under an educational net. To be able to see the joy in our youths eyes as they pull the fish out of the net, they get to be a part of a process of making smoked salmon and they get to take it home with them.

I live out on Funny River Road, which is 17 miles in, it's a one-way road right out of Soldotna. About 10 miles out of that road there is no fire protection. We have to rely on our own resources as a community out there. I have no electricity, no running water, no phone and I am only 16 and a half miles out of Soldotna. I do live a
rural life and I'm for Option 1.

The Den'ina Athabascans out on the Kenai have been there for a thousand years, we have never depleted the fish, the moose, our ducks, we have never depleted it. As stated before, through other testimonies, we kept our resources, enough so we'll have food for the future. So for a thousand years we have practiced our subsistence life, why change it when we our grandkids, my grandkids -- I don't have any kids, but my grandkids, if we fail today, my kids will not be able to see my way of life and I am in a transition between going into the future and living in the past. I've been taught to live a traditional life.

So please consider Option 1, thank you.

CHAIRMAN DEMENTIEFF: Would you go ahead and state your name for the record.

MS. SONJU: Amanda Sonju, S-O-N-J-U.

CHAIRMAN DEMENTIEFF: Thank you.

MS. SONJU: Thank you.

CHAIRMAN DEMENTIEFF: Brett Huber.

MR. HUBER: Thank you, Mr. Chairman, members of the Board. My name's Brett Huber, I'm the Executive Director of the Kenai River Sportfishing Association.

Kenai River Sportfishing Association, Inc., is a non-profit membership organization whose mission is preserving habitat, providing education and promoting responsible sportfishing on the Kenai. Kenai River Sportfishing Association appreciates this opportunity to provide comments to the Federal Subsistence Board members on the designation of the entire Kenai Peninsula as rural. Our association has been on record and remains strongly opposed to a Peninsula-wide rural designation. It is our position that the detrimental impacts that would be created by such a determination would far outweigh any perceived benefits by those advocating for the sweeping reclassification.

Since our inception KRSA has invested over two million dollars toward habitat restoration, fisheries conservation and public aquatic education for the Kenai
River. We've done so because we're aware of the difficulty in achieving the delicate balance required to conserve a healthy resource and we're trying to help. That difficulty is compounded when the resource is fully allocated and is accessed and relied upon by a diverse set of users as is the case on the Kenai. While it may not be perfect, we feel such a balance exists. It's our fear that implementing a rural determination for the entire Peninsula would not only destruct that balance, it has the potential to crush the scale altogether.

The rural determination would immediately put over 50,000 Peninsula residents in the category of subsistence users and entitle them to priority use. In the case of the Kenai River, even if subsistence use areas are confined to waters in and adjacent to Federal lands, basically from the Killey River up, the number of sockeye salmon, for example, to satisfy this new demand could well exceed a biologically sound harvest level. In worst case, sustainability of the runs could be jeopardized and in any case other users would almost certainly lose a substantial amount of the opportunity they currently rely on. For the less numerous salmon species, king and coho, these same problems would be further amplified.

It's our position that while no user group is entirely happy with their piece of the pie, current needs are being met. Cook Inlet commercial fisheries continue to be prosecuted, sport anglers wanting to put sockeye on the dinner table enjoy good access and reasonable limits, personal use fishermen enjoy the opportunity to fill their freezers with the dipnet fishery and the Kenaitzes have the opportunity to continue their cultural and traditional use, no doubt, an important component of their heritage through their current educational permit, an educational permit recently expanded by agreement with the Department of Fish and Game. All of these uses currently exist and needs are being met. They exist within a management regime that is admittedly imperfect but has the benefit of substantial scrutiny and the knowledge gained over time.

We believe that much of what the managers have learned and employed would be lost, or at a minimum, rendered ineffective if the sweeping change proposed were allowed to stand and be implemented.

It's our position that the State's Constitutional mandate to manage for sustained yield affords better protection to our fishery resources than
would the ANILCA benchmark of healthy populations. We believe the future of our fisheries will be better served under the current structure than there would be under an implemented Peninsula-wide rural designation and all of the change that would accompany it.

While I have not spoken specifically to the economic impacts that would result from a Peninsula-wide rural determination, I believe it's clear that such a dramatic change in an area that's so economically tied to its fisheries would be felt in all sectors. With a subsistence priority tied so closely to economic condition, it seems counterproductive.....

CHAIRMAN DEMIENTIEFF: Your time is up, would you please summarize?

MR. HUBER: I guess I should have read even faster, Mr. Chairman. We don't believe we're rural. We believe we've had all the benefits of a non-rural economy and a non-rural opportunity. We believe that implementing this decision would be counter productive and we urge the Board careful consideration and adoption of Decision 2.

Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. Connie Wirz.

MS. WIRZ: Good afternoon. My name is Connie Wirz and I reside at 5908 Teaberry Avenue. Today you will define who we are as a people, and more importantly, who you are as a people.

I'm going to summarize a writing from Chief Dan George of the Koselesh (ph) Indians, and then add a few comments.

For I have known you when your forests were mine, when they gave me my meat and my clothing. I have known you in your streams and rivers, where your fish flashed and danced in the sun, where the waters had come, come and eat of my abundance. I have known you in the freedom of your winds and my spirit like the wind once roamed for your good lands. But a long hundred years since the White man came, I have seen my freedom disappear like the salmon going mysteriously out to sea. The White man's strange customs, which I did not understand press down upon me until I can no longer breath. I fought to protect my land and my home and I was called a savage. When I neither
understood nor welcomed your way of life I was called lazy. When I tried to rule my people I was stripped of my authority. My nation was ignored in your textbooks. I was ridiculed in your plays and in your motion pictures. And when I drank firewater I got drunk, very, very drunk and I forgot. Oh, God, like the thunderbird of old, I shall rise again out of the sea and I shall grab the instruments of the White man's success, his education, his skills, with his new tools I shall build my race into the proudest segment out of our society. Before I follow the great chiefs who have gone before us, I shall see these things come to pass.

On May 4th, we, as a people, felt listened to. We felt empowered and honored. It's the first time in my life that I had felt that as an indigenous person. Now, we feel betrayed, we feel the burning betrayal that the people before us have felt. How can you ask us to prove that we're distinct when the very things that make us distinct have been regulated and we can no longer do so. You've put us in a Catch-22. We work hard to try and become successful people, but that doesn't mean we want to lose who we are and who our parents were. I just pray that today you will think about the fact that you're defining us.

Thank you for your time. Please consider Option 1 prayerfully.

Thank you for your time. Please consider Option 1 prayerfully.

(Applause)

CHAIRMAN DEMIENTIEFF: Thank you. Allan Baldwin.

MR. BALDWIN: Good afternoon Mr. Chairman, and the rest of the Board. I'll try to be very brief.

During a meeting with Alaska Department of Fish and Game this past winter, I stated that the educational fishery that the Kenaitze Indian Tribe currently uses was never meant to replace subsistence, only to educate our young tribal members until the day we once again can openly practice subsistence. The Fish and Game Staff agreed and the outcome of this meeting was a better relationship between the two, an understanding that subsistence cannot be replaced.

The notion that 50,000 men, women, children who range from the very young to the very old will flood the wilds, if you uphold your decision, is capricious, at
best. And I would like you to uphold your decision and consider Option 1.

I also have a letter from Bernadine Atchison.

CHAIRMAN DEMIENTIEFF: Yes, it's also on here and we'll start a time for the testimony, it's on your card.


Thank you for giving me the opportunity to speak on behalf of my family, my mother, children and myself. Subsistence has been a part of my life since I was a child, as it has been for my mother, grandmother, and sisters since time and memorial. It is part of our genetics and it is what sustains throughout our life. Subsistence is a word that covers many things. To me it is existence. It is what we do to nourish our bodies, it is how we work together as a family. Traditionally, when I was a young child, we would go hunting, the whole family. My dad would harvest the moose and we would all help holding a leg or a flashlight as he would prepare it to be brought home. After we got home and let it hang for a couple of days we would begin processing it. My dad would cut it up, us kids would pick the hair off the meat and then my mom would wrap it up. This is how we would bond with each other as a family. We learned responsibility in that we are all important in the family unit. Each and every one of us contributes to the family in providing nourishment that will sustain us throughout the year. We did the same with clam, salmon, ptarmigan, ducks, plant life and others. The list is long, just as in the plant life there are over 86 different plants that we use as food, dye or for medicinal uses.

We gathered our subsistence food from the Cook Inlet and the Kenai Peninsula. It does not stop there. We trade with the Interior and sometimes we do not get what we need here, they will provide for us with fish or caribou. We would do the same for them. That is what subsistence is about, taking care of one another so we live a healthy life. We have done this for the past 10,000 years in Alaska. It is who we are as a distinct group of people. It is a human right, the right to exist.

Thank you for letting me speak today, I am
for protecting our human right to subsist. I urge the Federal Subsistence Board to uphold the rural designation for the Kenai Peninsula.

Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. With that, we're going to take a very brief five minute break. We need to get this testimony done so we can get on with our deliberations.

(Off record)

(On record)

CHAIRMAN DEMIENTIEFF: Okay, if we can find our chairs, please, we need to get going again. Okay, Mr. John Morrison.

MR. MORRISON: Good afternoon, Mr. Chairman and Board members. My name is John Morrison and I reside here in Anchorage.

I'm a retired biologist of 49 years experience now in research management and education concerning wildlife resources. The last 23 of these years have been in Alaska. Some of the folks present today will remember me from the years 1993 through 1996 when I served as the Alaska Department of Fish and Game's liaison to the Federal Subsistence program. I'm now retired from full-time work but I still do consulting in my little one-man business, the Alaska Outdoor Information Service. I'm a member of the board of directors of the Alaska Chapter of the Safari Club International in Anchorage. I'd like to point out that we are not against subsistence. The Safari Club International is supporting several projects here in the state as well as over the whole world that are benefiting people that have a subsistence need and desire. We're particularly concerned that where subsistence is valid, either by rural residents or need, that it be done according to the law.

My past involvement with the Federal Subsistence program gave me unusual experience with the manner in which Federal subsistence determinations such as rural designations are made. I rely on this experience now to state unequivocally that the Federal Subsistence Board made a serious error in designating the entire Kenai as rural. I have reviewed the evidence that the Board considered and have studied the analysis issued recently by the InterAgency Staff Committee. The majority of that
committee properly recommended that the Board reverse its rural determination. In my opinion, this recommendation is the only one that is supported by the evidence and by adherence to the rural determination methodology required by Federal law. A rural designation is crucial for determining subsistence priorities under ANILCA. No group of individuals can request subsistence priority unless they reside in an area that the Board has designated as rural. For rural decisions to be made fairly and consistently, they must be made through careful consideration of the most reliable evidence and adherence to required criteria and procedure.

It is important to remember that a rural determination is not easy to undo. Unlike a customary and traditional use determination, a rural determination cannot be changed from year to year. Once an area is declared rural, such a classification will remain in place for no less than five years. For all these reasons the Board members had a duty to all the residents of the Kenai to exercise great care in making this determination. The Board did not fulfill this duty, instead the Board members own statements reveal that they gave less concern to appropriate procedure and to recent and verifiable data than they did to the impatience of the Kenaitze petitioners.

For example, Mr. Caplan indicated that while he knew that data from the 2000 Census and a revision of the rural determination methodology could clarify the Kenai's non-rural status, he was nonetheless willing to go forward with a determination that could pose a long-term disservice to the residents of the Kenai.

CHAIRMAN DEMIENTIEFF: John, if you could summarize, please, your three minutes are up.

MR. MORRISON: We would also submit to the Board, a petition signed by 729 residents of Southcentral Alaska and Fairbanks area asking that the rural designation be changed. (Attached) These petitioners come from all kinds of backgrounds but have in common a desire that subsistence regulations be made in conformance with reality and legal requirements.

Thank you very much for this opportunity to present this, and I do hope that the Board will adopt Option 2 as described the InterAgency Staff Committee. Who do I give these, too?
CHAIRMAN DEMIENTIEFF: Let's see, she'll take it right here.

MR. MORRISON: Thanks.

CHAIRMAN DEMIENTIEFF: And it's good to see old friends again.

MR. MORRISON: Well, I hope I didn't sound too grumpy.

CHAIRMAN DEMIENTIEFF: Marvin Peters.

MR. PETERS: I'm Marvin Peters. I'm the Chairman of the Homer Fish and Game Advisory Committee but speaking on my own behalf. We got notice of this meeting too late to schedule a meeting to discuss it.

I'm a Cook Inlet drift gillnetter and I work full-time, year-round near Homer in a fishing boat-related industry store. I do a lot of business in the various communities in western and northwestern Alaska. We sell a lot of subsistence nets and equipment. I can sell you a net for whitefish to white whale and I'd be happy to do that. But those communities are distinctly different from the Kenai Peninsula by any -- the rest of the country would, no doubt, consider the whole Kenai Peninsula rural compared to Manhattan Island we are, compared to Nunivak Island, we're not. And the differences are very distinct. The five communities that were listed as the communities to compare to as subsistence rural communities have one major difference between us and them and that is the road system.

Sure, we can all get on a plane if it's scheduled right and we can be anywhere in a few hours. The difference is, I don't have to have it scheduled right, I can jump in my car and drive to Anchorage or even Kenai and be anywhere in a few hours, and it is a big difference. The other difference is that established industries are not established in legitimate Alaska rural communities because there is no transportation.

In the fishing industry, in particular, I deal with people who would like to buy nets and they have fish and they have populations that they could exploit but they have no markets. The difference between a 15 cent a pound chum in Kenai and a 65 cent chum in Kotzebue is 50
There is a tremendous subsistence lifestyle in Kotzebue and I appreciate that and I support it strongly and I have to say I support the Kenaitze, I understand their situation but the way the law is written now there is no way to meet their subsistence requirements without completely changing the law as put forth in ANILCA. I don't see any way you can say that the Kenai Peninsula is rural for the purposes of ANILCA. It's just not.

That's all I can add to that, I guess, thank you.

CHAIRMAN DEMIENTIEFF: Thank you very much.

Phil Cutler or Cutter, I'm not sure which it is.

MR. CUTLER: Mr. Chairman, members of the Board, my name is Phil Cutler. I have been involved in resource management, fisheries, in this area for more years than I care to admit to. I am currently the president of the Alaska Sportfishing Association.

I sat at the Regal in May of 2000 and honestly was dumbfounded by the decision. As a financial analyst I tried to analyze, reanalyze and reanalyze all the information and I was dumbfounded at the outcome of the meeting. Since then I have reanalyzed again, gathered new information, read everything I could and I sympathize with customary and traditional needs. I believe that we have kind of a caesium here and I don't know how we're going to address it but I do think that the rural designation for the Kenai Peninsula, overall, is not in the best interest of all the people of the Kenai Peninsula or all the people of Southcentral Alaska, and I urge you to follow the recommendations of Staff, the recommendations of the Alaska Department of Fish and Game and vote for Option 2.

Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. Evelyn Huf.

MS. HUF: Good afternoon. My name is Evelyn Huf and I reside in Kenai, Alaska. I am the daughter of Amil Dolchok and I'm sure many of you are familiar with his name and his face. I came here today and so did one of my daughters, we, too, are lifelong residents of Kenai. It wasn't until my father died on May 2nd of this year that I realized that what he had been tirelessly fighting for was my and my children's way of life because I'd never labeled it before. I cannot remember not having
I am one who avoids any political arena but I came today to remind you of some of the thoughts my father had. The local year-round resident should not have to take a backseat to the sportfisheries that cater to persons residing outside the state of Alaska for the allocating of fish. The local Kenai resident should be allowed access to the fish before June 1st to ensure processing before the flies blow their eggs. With the limited personal use fisheries, we are allowed to fish on a small crowded portion of beach where not all who desire to fish can obtain a spot and then the time given, always lines up with poor fishing tides, yet, we are expected to sit back, keep quiet, take what we get and watch as more and more is stripped from the resident.

In my father's March 2001 testimony he said, I am a Kenaitze Indian who has lived on the Kenai Peninsula all of my life, long before it was divided into units and subunits, long before it was a refuge and long before statehood, before territorial days my parents and their parents hunted the Peninsula. For generations my family has hunted game and fished the waters of the Peninsula as a whole, all the areas between Point Possession and the Kasilof river. Our neighbors utilized the land from Kasilof around Tustumena Lake to Kachemak and on around to the Prince William Sound. I've testified before to this committee about the importance of and the uses of the fish resource. I want to once again say how important it is for us to have access to the fish resource starting early in the spring. And I will once again say that our people never wasted or abused our right to use the fish and game. Our use of the fish, game and plant life was a source of our existence. The importance of the resource has been central to who we are as people. We have subsisted on the resource for generations.

I found in his paperwork, after he died, another letter he was writing to the editor regarding hooligan fishing. This is yet another example of what is being taken away. There are no stellar sea lions on the Kenai River to protect, yet, we are told to give up the way that we have always caught the hooligan and tried to dip a few. I am in agreement with my father that this is ridiculous.
MS. HUF: I would like to say that in Kenai the reason that so many people go there, the tourists, the Safari, the Chambers is because of its wilderness and its rural area. And I would like to ask that you affirm the decision made last May to declare the Kenai Peninsula rural.

CHAIRMAN DEMIENTIEFF: Thank you very much.

Susan Wells.

MS. WELLS: I'm Susan Wells. Susan Mars-Wells. I'm here today to present a resolution from the Kenai Native Association and also my own testimony if that's okay.

CHAIRMAN DEMIENTIEFF: Yes.

MS. WELLS: If I could start with the resolution from the Kenai Native Association, I don't want to read it all. We do represent and I represent here today 579 shareholders. All of us are Alaska Natives. And our tribes and villages are facing increasing pressures concerning the preservation and perpetuation of our culture and traditions. Subsistence cannot be separated from our culture and traditions. We are natural stewards of our ancestral lands and its resources. We have respected and depended on these resources as our inherited cultural way of life. And the Kenai Peninsula is a rural area by any reasonable definition of the term as determined by the following factors; among them are, and we'll list seven, I won't go over them, I'll give this resolution to you (Attached)

Our final Whereas, it is the conviction of the Kenai Natives Association Board of Directors that the preservation and fostering of traditional subsistence lifestyles for its members and all Alaska Natives residing on the Kenai Peninsula is the primary means for preserving and perpetuating our vital culture and traditions and now, therefore, be it resolved that the Kenai Natives Association Board of Directors fully supports and endorses the designation of the entire Kenai Peninsula as rural for the purposes of subsistence. And be it further resolved that the Kenai Natives Association Board of Directors fully supports and endorses Title VIII of ANILCA, which grants rural preference to the residents of the Kenai Peninsula, thereby making them eligible to practice indigenous, customary and traditional subsistence. It's signed by our president, Richard Segura and myself as secretary.
CHAIRMAN DEMIENTIEFF: Thank you. You had a personal statement you wanted to make?

MS. WELLS: Yes. As I stated before my name is Susan Elise Mars-Wells. I am a lifelong Peninsula resident and a subsistence fisher, hunter and gatherer. I am also a commercial fisherman, teacher and Alaska Native.

I'm here today to urge the Board to uphold the just, fair and legal decision of the May 4, 2000 rural determination for the communities of the Kenai Peninsula. I have read the request for reconsideration thoughtfully, they have offered no new information to be considered, but yet we must come before you once again to present our case.

I am a resource user who is forced to purchase an Alaska sportfishing license before I can go to the beach to get clams, catch fish or hunt moose and game to feed my family. The State has eliminated my subsistence fishing and substituted a personal use fishery that has been limited over and over again. I am not a sportfisherman or a hunter, yet I have no choice if I want to get food for my household. I cross out the word, sport, on this license and I put in subsistence. This is unfair for me.

The State has severely restricted my access and ability to hunt, fish and gather my subsistence resources. I am limited to seasons, areas and the amount of resource I'm allowed to eat and then I become a statistic to justify the further limitations on commercial and personal use fishermen so the sportfishing industry can have their allocation. The Safari Clubs and the Kenai Peninsula Outdoor Coalition want the allocations to "hunt, fish and otherwise enjoy the wildlife and fish that populate the public lands of the Kenai Peninsula in the future." This is what I am asking for, too, only I want to consume the wildlife, not to recreate with it. The requesters are advocating for sport recreation and economic viability of the commercial guiding industry. I advocate for the residents of the Peninsula for the use of the resource to feed their families. And it needs to be stressed again that my income or the distance I live from a grocery store has nothing to do with a subsistence lifestyle I have known all my life.

I am submitting additional written testimony but at this time I would like to share with you a subsistence trophy fish. As a teacher I'm allowed to do show and tell. I'm sure you've all seen a trophy fish,
maybe some of you have one on your wall, this is a subsistence trophy fish. I show you this to illustrate my customary and traditional use of the fish I catch and consume. I was taught to put up fish this way by my grandmother and I've taught others to do so as well. I eat this type of trophy. I will eat this trophy and I will share it with our elders that came today. Not any part of this fish was wasted. The part that you do not see here today was cut into seagull bite sized pieces and taken far below the tideline so as not to stink up the beaches. Our sportfishers do not exhibit such courtesy. With.....

CHAIRMAN DEMIANTIEFF: Ms. Wells, could you please summarize?

MS. WELLS: I will, sir. Without the rural determination I will be denied subsistence fish and the traditional time to prepare. This is just a glimpse of the ways I prepare fish. The residents of the Kenai Peninsula have the right to a subsistence lifestyle and the May 4, 2000 decision.....

CHAIRMAN DEMIANTIEFF: Your time is up.

MS. WELLS: Okay.

CHAIRMAN DEMIANTIEFF: Thank you very much.

Wayne Wilson.

MR. WILSON: Hi, I'm Wayne Wilson, I'm reading for Mary Ann Tweedy, I think I wrote it on there.

My name is Mary Ann Tweedy, I am a Kenaitze tribal member. I'm here to ask the Board to stay with the rural designation of the Kenai Peninsula. When I was a child I used to fish in the mouth of the Kenai River with my parents. Life was simple and wonderful. Our diets consisted of moose, fish and resources gathered in the season. This lifestyle was taken away by regulations of our natural resources. What I see here today is people that have come into our homelands for various reasons, I believe the majority of these people consist of two groups of people. The first group came here to get away from the fast paced lifestyle and return to a simpler way of life. The second group of persons, whether they will admit it or not are here for their personal monetary gain from our natural resources, thus taking away our subsistence rights.

I believe the first group lost sight of their original reason for coming here, possibly because the
adjustment was too much and they have managed to create
their own little Beverly Hills, Alaska-style and all the
regulations that go along with it. The second group
absolutely does not care about our way of life, our natural
resources or our quality of life. Their goal is to make a
fast buck any way they can. When we can no longer provide
the resource, they will go somewhere else and raise havoc
with other cultures. This has happened for centuries with
other people all over the world, if we care to consult our
history books.

The Kenai Peninsula has not changed much
over the past year. Population increases are minimal.
There is only one highway system to come in or out of the
Peninsula. The only public transportation system is the
Kenai/Soldotna area is the Central Peninsula Rural
Transportation System. The Kenai Peninsula Borough and
school district receives rural funding, as does their
utility companies. We are also eligible for rural, low and
economic development grants. In some areas there is still
no electric, natural gas, television or phones. We will
pay more for gas at pumps on the Peninsula than in
Anchorage. There are many medical services that we still
must travel to Anchorage to obtain. We also have two
airports on the Peninsula that are FAA certified for safety
and are legal for commercial airlines, airplanes that carry
over 30 passengers, they are at Homer and Kenai. We only
have one commercial airlines that flies the Peninsula that
carries over 30 passengers.

I'm asking the Board to maintain their
decision to keep the Kenai Peninsula rural.

Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. Geneva
Marinkovski.

MS. MARINKOVSKI: Mr. Chairman, members of
the Board, my name is Geneva Marinkovski. I was born and
raised in the rural community of Selawik, Alaska. My
parents taught me to live subsistence way of life in the
Inupiat culture. As my father would say, we live in
subsistence cycle.

Early spring we go out to Selawik Lake to
hook for sheefish. The men are out hunting for caribou and
goose. The ice break up we prepare for spring camping. We
fish for white fish and pike. My mom taught me how to
scale, cut, hang and store catch for the winter months.
Summertime we were out getting greens and rhubarbs. We cook all the rhubarbs and store them for the winter months. Falltime we prepare food and gear so that the men can go out moose hunting and bear hunting while me and my mother and siblings are out berry picking. My mom and dad made sure that we get enough stored for our family and others for the winter months.

I can go on but this is just some of the examples of subsistence I learned from my parents and I would like to be able to continue.

In April 1982 I moved to the Kenai Peninsula area. I had to adapt to live and learn subsistence lifestyle. It is very hard because of the hunting and fishing restrictions and regulations we have to abide by. I would like to live -- I would like to continue to live subsistence lifestyle in the Kenai Peninsula. I would like to pass it on -- or excuse me, pass on my subsistence skills to my children so they can continue to live subsistence cycles.

I, too, am urging the Board to uphold its decision, Option No. 1, because I know for a fact Kenai Peninsula is rural.

Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. Eva Lorenzo.

Yeah, my name is Eva Lorenzo. And I lived in Kenai in the village of the old townsite of Kenai for 71 years of my life. I believe in my Native culture and also my traditional culture. I lived at a time and I grew up at a time when there was many oldtimers, some of them lived to be 90, some of them 100, but to this day I really believe that they strongly believed in their Native culture, their tradition and also they had the faith.

There was many things the oldtimers have told me that I didn't know that was going to come true. One of my grandpas that was married to my aunt, grandpa, he used to tell me, one of these days there's going to be some big birds flying, now, you know, sometimes I get to thinking about that, I think he meant these big 747s, you know, and I still think about it today. But a lot of people have believed that, they were superstitious, you know, and they would say that and everything. But I really do believe that they seen stuff, you know, that was going
to come ahead in our lives.

But I do want to keep this Native culture and this traditional culture for my grandchildren also. I would like to see them grow up and put up fish and do all the stuff that I did when I grew up. We didn't have everything, just like I told my granddaughter one day, I said we didn't have everything what you have today, I said, we didn't have refrigerators, we didn't have freezers but I said, we stored our stuff the way -- the best that we had to. So we stored stuff in five gallon barrels, salted our moose meat down and everything was saved. There was nothing out of the moose, even the head was made into head cheese, and it is very delicious. So, to me, all my Indian Native food is really traditional and the culture, I'll always remember from all the elders from when I grew up, and everything that we had we didn't waste. We were taught to be not wasteful, we were taught to, you know, understand more about our Native way of life.

CHAIRMAN DEMIENTIEFF: Could you please summarize, your time is running out -- has run out.

MS. LORENZO: I would like you to really remember our dear friend who strongly believed in the Native culture and the traditional culture, our dear friend Amil Dolchok. He always spoke his voice out for us. He always spoke about his things that he loved to do, his hunting, his fishing; we will all miss him very much because I think with his and his speaking for our Native rights will always be remembered through him.

And I want to thank all of you.

CHAIRMAN DEMIENTIEFF: Thank you. Jennifer Showalter.

MS. SHOWALTER: Hi, my name's Jennifer Showalter and I'm a Kenaitze tribal member and have lived down on the Kenai Peninsula for the majority of my life. I'd like to make a note that the Board has made a decision in May of 2000 to keep the Kenai Peninsula rural and this was a decision that was long waiting and difficult to make, but I feel that it was the best decision.

After living on the Kenai Peninsula for the majority of my life I had to leave to go on to continue my education which is what everybody down on the Kenai Peninsula must do if they choose to continue their education which is part of living in a rural area. Growing
up we depended on food off the land, jobs were few and most were seasonal. As an adult, I see many people I've grown up with depending on the land as well. Many people must travel outside their community in order to work, others only work during the summer months. There are few jobs available in the Kenai area unless you've been able to get a higher education which has been difficult for a lot of people to do.

I was also thinking about all the people who have come here today opposing the Kenai Peninsula being rural and I have found it kind of ironic that most of them are sportfisher and sport hunters. I remember when I was growing up there was one sportfishing guide on the river and he now looks back at it and says, if I knew then what I know now I would have never started doing that. There's now, I believe 500 fishing guides on the river that go up and down. It's something that a lot of people don't even like to go to the river now and look at because they're everywhere.

Again, I'd like to urge the Board to keep their original decision, which was Option No. 1 and keep Kenai as a rural area.

Thank you.

Joe Daniels.
Thank you.


MR. FULTON: Thank you, Mr. Chairman and the Board. I am reading this testimony for Robert Fulton, Tribal Elder Kenaitze Indian Tribe member.

I thought anything for reconsideration had to have some type of new evidence to warrant the type of action but after reading the complaints, I don't see any reference of this. The only thing I see is their fear of possible chance of losing their ability to hunt and fish as before. The facts are the same, now, as before when the Board ruled the Kenai Peninsula was rural. All we can do now is present the same evidence over again and this is only rehashing the past issues. At this time I would ask that the Board uphold the decision you have rightfully made.

Thank you very much, Robert L. Fulton.

CHAIRMAN DEMIENTIEFF: Thank you. Elaina Spraker.

MS. SPRAKER: Good afternoon. My name is Elaina Spraker and, for the record, I am a personal use fisherman and hunter.

I am a former chair of the Kenai Peninsula Outdoor Coalition, a broadbased group formed by many residents of fishing, hunting trapping and outdoor organizations. Our organization is now inactive. Most of the residents, like myself, no longer attend these meetings because the Federal system has consistently failed our community.

The vast majority of the Peninsula residents strongly opposed the decision when the seven Kenai Peninsula towns were declared rural. Deeming the entire Kenai as rural makes even a greater sham out of true subsistence. I pose the question to the Federal Subsistence Board what modern convenience that is found in Anchorage are not found on the Kenai Peninsula?

For example: We can fly out of the Kenai airport on the hour. We have modern highways. Using my cell phone, I can have a hot pizza delivered to my house in less than 30 minutes. My mail is delivered to my house. I
do not have to wait for a mail plane to arrive weekly, weather permitting. There’s an espresso stand virtually on every corner where I can enjoy an Americano, shot of coconut with cream at the top. Residents of the Kenai have modern medical facilities, fire protection and many social services available to them. My town of Soldotna, not only has one high school but two. Like Anchorage, we have super convenient stores, fast food restaurants and many more urban characteristics than rural. Yesterday, construction started for the Aspen Hotel, which will include amenities such as a swimming pool, exercise room, conference room and spa. If the Kenai truly was a subsistence community, more residents would be hunting and fishing in the field for the sustenance than in Safeway or Carrs.

Residents of the road-connected communities of the Kenai Peninsula were not engaged in a subsistence way of live in 1980 when ANILCA became law, even then, nearly 20 years ago the fish and wildlife resources of the Peninsula were already full allocated to personal use, sport and commercial categories of users. If that was true then, how is it possible now that these communities have somehow regressed back to a subsistence way of life today. They have not. To the contrary, the Kenai Peninsula is one of the fastest growing areas in Alaska. Between 1980 and 1990 the population of the Kenai Peninsula Borough increased from 25,282 to 40,802. The current population is estimated at approximately 50,000 and growing. Although many people in these communities hunt, fish and enjoy eating fish and game, few, if any of them, depending on these resources to sustain life. When they get up most mornings, they are not forced, by necessity, to go out and catch something to eat. Instead, these people are employed in the oil industry, tourism industry, fishing industry, construction industry, manufacturing industry, retail/trade industry, service industry, local and state and federal government jobs. They hunt and fish for personal use, recreate and commercial uses.

CHAIRMAN DEMIENTIEFF: Your time has expired, could you please summarize?

MS. SPRAKER: Congress never intended for the National Wildlife Refuge to be rural. It is the only Refuge established by ANILCA whose purposes do not provide for an opportunity for continued subsistence uses. In conclusion, to reaffirm a rural determination for the Kenai Peninsula is as absurd as finding the Anchorage as a subsistence dependent rural community.
Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. That concludes our public testimony. At this time we'll advance the request for reconsideration to the Board for deliberation and decision. And procedurally, I would suggest to the Board that we deal with Option 3, since the petitioner basically withdrew support for Option 3, afraid if we don't have enough votes, that way what I would recommend is that we go with Option 2 and that if that motion fails, then we would be in status quo; we would have affirmed support of Option 1. But since I've heard no support for Option No. 3, I suggest that we just deal with that first. Gary.

MR. EDWARDS: Mr. Chairman, if that's how you would prefer to proceed, then I would move that the Federal Subsistence Board rescind its May 2000 decision that designated the entire Kenai Peninsula rural for the purpose of implementing the subsistence priority provided in Title VIII of ANILCA.

The effect of my motion, if adopted, will be to reinstate the rural and non-rural determinations for Kenai Peninsula communities and areas that were in effect prior to May of 2000.

CHAIRMAN DEMIENTIEFF: Gary, the only thing was is that I was hoping that we would get rid of Option 3 first that way -- because we would still have Option 3 on the table if this fails, and I'm saying since we've heard no support for Option 3, that if we just move to reject Option 3, then your motion would go up or down, we'd do that in one decision.

MR. EDWARDS: What was that about?

CHAIRMAN DEMIENTIEFF: Yeah, I didn't hear you with that last motion then. But the Chair would entertain a motion for us to reject Option 3.

MR. EDWARDS: Mr. Chairman, I would so move that the Board put aside Option 3 and move to Option 2 for consideration.

CHAIRMAN DEMIENTIEFF: Okay, there's a motion to, I don't know, put aside Option 3; is there a second to that?

MR. CAPLAN: Second.
CHAIRMAN DEMIENTIEFF: Okay, moved and seconded; is there any discussion? Hearing none, all those in favor signify by saying aye.

IN UNISON: Aye.

CHAIRMAN DEMIENTIEFF: Those opposed, same sign. Motion carries. Now, Gary, your motion. I think I got my hearing aid in now and I might be able to hear it better.

MR. EDWARDS: Mr. Chairman, I move that the Federal Subsistence Board rescind its May 2000 decision that designated the entire Kenai Peninsula rural for the purpose of implementing the subsistence priority provided in Title VIII of ANILCA.

The effect of my motion, if adopted, will be to reinstate the rural and non-rural determinations for Kenai Peninsula communities and areas that were in effect prior to May of 2000.

CHAIRMAN DEMIENTIEFF: There is a motion, is there a second?

MR. CAPLAN: Second.

CHAIRMAN DEMIENTIEFF: Okay. Again, the effect of this would be that if it is successful, the motion, that would be the action, we would rescind. If the motion is not successful, then we would have kept Option 1, which is affirming the action from last year.

Okay, discussion.

MR. CESAR: Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Niles.

MR. CESAR: Mr. Chairman, I rise in opposition to the motion. I intend to vote against the motion. Based on review of the Staff analysis, claims presented in the request for reconsideration does not appear to meet the reconsideration threshold established in revised Board policy for reconsiderations.

Specifically, the requesters failed to provide information not previously considered by the Board that demonstrates the existing information is correct or that demonstrates that the Board's interpretation of
information, applicable law or regulations is in error.

Thank you.

CHAIRMAN DEMIENTIEFF: Thank you, Mr. Cesar. Anybody.

MR. CAPLAN: Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Jim.

MR. CAPLAN: Yes, sir, thank you, Mr. Chairman. I intend to support the motion to rescind the May 2000 Kenai Peninsula rural determination.

As many of you recall and has been referenced, I, at that time supported the rural determination for the Kenai. But based upon the June 2001 Staff analysis, which I found a considerable improvement over the one from the year 2000 and including the 2000 census information that was available to us and in collaboration with our office, the Chief, our National Headquarters in Washington, I find as follows:

I find that the community aggregations made on the Kenai Peninsula are even more valid and more appropriate now than they were in 1990. In particular, the Kenai area, Homer area and Seward area, as aggregated, represent communities that are integrated economically, socially and communally. Since 1990, the continued growth and development of these communities has increased their level of integration. As aggregated, the Kenai and Homer areas have population levels above the regulatory benchmark of 7,000 and are above the level to which the rural presumption applies. The total population of the Kenai Peninsula is quite high in comparison to the rural areas of Alaska and greatly exceeds the 7,000 person population benchmark. However, by far most of the Peninsula's population resides in the three aggregated areas and for this reason it is more appropriate to consider the aggregated areas separately instead of the entirety of the Peninsula. Accordingly, despite the low density of the Kenai Peninsula as a whole, these three areas have population densities on the high end of the scale with the population density of Anchorage.

While some other Alaskan communities designated as rural may have higher population numbers, the three Kenai Peninsula areas exhibit overall non-rural characteristics. Economic opportunity, employment, per
capita use of fish and wildlife resources, community infrastructure and transportation characteristics of the three areas more closely resemble that of the non-rural communities identified in the Legislative history of ANILCA rather than of the rural community examples.

In short, the nature of these Kenai Peninsula communities, as aggregated, is predominately and increasingly non-rural in light of population numbers and community characteristics. Therefore, I will support the motion to rescind the Board's May 4th, 2000 rural determinations for the Kenai, Homer and Seward areas of the Kenai Peninsula and to reinstate the non-rural determination for these three areas.

Mr. Chairman, I'd also like to make a remark that I did at the beginning of the May -- excuse me, while I take a drink here, I've got a bit of a cold. I'd like to repeat the remark that I made at the beginning of our May session. Which was that, frankly, I was surprised that the people of the Kenai Peninsula would bring to a Federal Board something so personal and something so important to them, normally in their normal lives. I believe that that means that the people of the Kenai Peninsula are giving up their power to work neighbor-to-neighbor to resolve these issues. I would ask that, folks, just before we consider our next moves in terms of going to court or whatever we're going to do next with these issues, that you think very, very seriously about what it is you want in the future and that you work together to try and achieve it. I'll pledge to you all the resources of Forest Service and we have mediators, we facilitators, we have skilled attorneys, we have many, many people who can help you in trying to resolve these issues and achieve a future that you can all embrace. Short of that, you'll be back before this Board again, probably in court, and I'm not at all sure that that's what we want, any of us speaking as Alaskans and as Alaskans to Alaskans.

Thank you, Mr. Chairman.

MS. GOTTLIEB: Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Fran, go ahead and then I'll get to you, Judy.

MR. CHERRY: Thank you, Mr. Chairman. In my second year serving with the Federal Subsistence Board I've come to a much fuller appreciation of the unique challenges facing us. This is a complex and controversial
mandate with strong and emotional views held by all sides. In the past year I've learned much more about the population dynamics of fish and wildlife resources and the complexities of managing with divided jurisdictions and the rich culture and historic practices of subsistence users and other stakeholders.

The Kenai rural determination is certainly one of the most difficult decisions we have faced. It is a crucial example of sharply conflicting interpretations and regulations, data and public testimony. The perceptions of all sides have value and integrity, but we are obliged to choose an outcome that fulfills our mandate to protect resources and provide for the rural subsistence priority.

A year ago we adopted a determination that the Kenai, Homer and Seward areas of the Kenai Peninsula should also be rural. At that time we were largely focused on shortcomings in data and an analysis based on which the Board made decisions in 1990. Like other Board members I was troubled by the lack of accurate and up to date information on population, economics and fish and wildlife use. I was moved by the intensity of testimony by the Kenaitze representatives. I reached a conclusion that the Board had likely erred in its interpretation of information in 1990 and that a delay until the 2000 census was not reasonable. Since that time, the Safari Club and Cooper Landing Advisory Committee request for reconsideration have raised a number of legitimate questions about the data and analysis on which the Board based the May 2000 decision. The Alaska Department of Fish and Game also submitted comments challenging the Board's procedure and posing technical questions about the accuracy and completeness of the data and interpretation.

In light of the high level of public concern and the importance of establishing a complete and conclusive record for the Board's decision I supported the reconsideration and the development of a more complete Staff analysis. Despite the additional delay, I believed this investment in more thorough information helps us make a technically sound decision and one that will strengthen public support for the Federal subsistence priority. An additional benefit of the time dedicated to these requests for reconsideration is that we now have accurate and up to date population figures from the 2000 census. Of particular importance, it appears that the information available to the Board in May 2000 substantially underestimated the population of the Kenai area. At that time, we understood the Kenai area to have a population of
22,400 whereas the current figure is actually more than
30,000. Differences in the figures for Homer and Seward
are more modest but the new population data demonstrates a
large and growing population for most of the Kenai
Peninsula.

The rate of change demonstrated in the
preliminary census data leads me to reconsider my
conclusion of May 2000. I am particularly concerned about
what would happen if we were to take an action now that
would be led to reverse in two years when the census socio-
economic data is available for a statewide rural review
process. This would not be an outcome that brings
stability to subsistence management on the Kenai Peninsula.

As a result, I'm going to vote to rescind
the Board decision of May 2000 and to conclude that the
Kenai, Homer and Seward areas are non-rural. My reasoning
parallels that of the Staff analysis decision Option 2 and
the majority Staff Committee recommendation for this
option. The aggregation of closely tied communities into
three areas is appropriate and the three areas have been
properly placed into population-sized categories. In a
final step, community characteristics for the areas are
closely examined. In my view the economic patterns and the
fish and wildlife use patterns among the three areas are
predominately non-rural in character.

In closing, I have one additional concern
to raise. The Kenaitze people have invested a great deal
of time and energy in testifying to the Board regarding
their traditions of resource use. They have a perfectly
legitimate desire to see those traditions protected. I ask
the Board to join me in a letter urging the Alaska
Department of Fish and Game to continue and strengthen a
program of the educational fisheries and cultural harvest
opportunities to provide for the Kenaitze people. The
legitimate needs of the Kenaitze can be better accommodated
through focused efforts of this sort and the State has a
well-established program to provide special opportunities
of this sort. In my judgment, the purposes of the Federal
subsistence program and the stability of the resource
management for all users on the Kenai Peninsula are better
served by the programs of education and cultural harvest
for the Kenai Peninsula residents for whom this is
appropriate.

Thank you, Mr. Chair.
CHAIRMAN DEMIENTIEFF: Thank you, Judy.

MS. GOTTLIEB: Thank you, Mr. Chairman. I'd like to thank everyone who is here with us. I appreciate your efforts and your interests. I'd also like to recognize the Kenaitze tribal members and to acknowledge the value of their history and culture, including subsistence activities. To keep traditions alive for future generations and ensure that rural residents have a continuing subsistence opportunity takes careful forethought. This is the basic intent of ANILCA, Title VIII and the mission of this Board.

The continuation of the opportunity is threatened by the increasing population of Alaska and the every increasing accessibility to remote areas. This is why I feel the Kenai Peninsula must be declared non-rural. I, along with the other Board members, have thought about this issue quite a lot. I've discussed it at length with many people, both inside and outside of this program. I've read and considered the most recent analysis as well as our past record, documents, testimony and transcripts. The decision to be made is important. It matters to real people. I am very aware of this fact. This is neither an easy decision, nor one without controversy. I believe it has far-reaching consequences. The decision we made, defining who participates in Title VIII, subsistence priority, is of fundamental importance.

In regard to the Staff analysis, I concur with the Staff's assessment of the merits of all the listed claims, those accepted and those rejected.

I just wanted to speak briefly to those points. For aggregation, the 1992 record of decision states: Rural determinations would be made based on aggregated population and community characteristics and this is how we have done the process. The communities on the Kenai Peninsula were properly aggregated into the three areas, Kenai, Homer and Seward. And finally, the aggregations of communities which are required are our regulations, thus the three aggregated areas are an appropriate basis for this analysis and this decision.

In terms of populations, the aggregated population for the Kenai area, as we've heard, is over 30,000, this is far above the presumed non-rural threshold of 7,000 in our regulations. Sixteen of the 18 communities in the three aggregated areas have increased in population during the past 10 years and many substantially. There's
nothing in the February 2000 analysis nor in the May 4th, 2001 RFR analysis that successfully argues for a rural finding for any of the three aggregated areas. On Page 19 of the report, it lists the community characteristic indicators, which this Board has used to distinguish differences between rural and non-rural communities. One indicator has a specific threshold, the per capita harvest levels, which states that a harvest of less than 100 pounds per year indicates non-rural status. In Appendix G, we see that the Kenai area falls well below this threshold with 37 pounds per capita. This can also be expressed by saying that the Kenai area falls in the lowest 10th percentile of more than 150 communities. This same table shows that the Kenai area is also low in the number of resources harvested coming in at 5.1 compared to Sitka with 31. Although the three aggregated areas may exhibit some mixed characteristics, they were non-rural in 1990 and this Board affirmed that decision in 1991.

The flawed methodology concern, this document before us today says it best, the February 2000 analysis identified some weaknesses in the methodology used in 1990 to make rural determinations. Despite these weaknesses, there is no evidence to suggest that a better methodology or more data would result in a rural determination for the Kenai Peninsula.

ANILCA intent, I've reviewed the Senate report, 96-413, Title VIII and this Board's regulations. I believe we have appropriately followed Congressional intent, the statute and our own regulations if we support a non-rural finding. If, however, we found for a rural determination, I believe we are at risk of misinterpreting the intent of Congress. ANILCA, Section .801(2) says: The situation in Alaska is unique, in that, in most cases no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses. Clearly, the communities within the three aggregated areas have many practical alternatives to food supplies and other services not unlike Anchorage and Fairbanks.

The unfortunate reality is that the Kenaitze are disbursed throughout the Peninsula and do not represent identifiable bounded community or geographic enclaves that can be pinpointed on a map of the Peninsula. And I agree with the State's comment that although the information provided by the Kenaitze is relevant and important, the Kenaitze represent a small minority whose
resource use patterns and history cannot be extrapolated to the entire Peninsula.

Thank you, Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Thank you. As for myself, I have reviewed the OSM Staff analysis of the request for reconsideration of the Board's May 2000 Kenai Peninsula rural determination, written comments and listened carefully to the public testimony. Based on the information presented I am not persuaded that the Board's May 2000 decision was incorrect. I am going to vote to affirm or to vote against the motion on the floor based on the rationale and justifications set forth in Option 1 of the Staff analysis.

The Staff analysis of the two requests for reconsideration fully supports the Board's previous decision. No new evidence has been presented that was not already considered by the Board in past deliberations. The Staff analysis found only seven claims that needed to be addressed. Those claims were grouped into four issues; aggregation, population, flawed methodology and ANILCA intent. In the analysis of the four issues it is plain that all of these issues were thoroughly considered by the Board in making the May 2000 decision to find the communities on the Kenai Peninsula rural.

Further, just to the doom and gloom sayers, I remind the Board that, you know, we heard it all when we did the C&T determinations and found part of the Peninsula rural a few years back. It's going to be the end of the world and all that, and nothing changed on the Peninsula on the ground. Fourteen months ago, a week shy of 14 months ago, we voted to make the Peninsula rural; nothing changed on the ground on the Peninsula, nothing changed. Just the doom and gloom sayers running around saying it's the end of the world. I just remind you that we can make these tough decisions and we can stand by them, but in order to do that, you know, we've got to make sure that we don't listen to those people who would say it's the end of the world because it just simply is not. Things would have worked out. It's apparent, you know, from the discussions that we're now going to back down on our decision from last year. Things would have worked out, it wouldn't have changed things on the Peninsula very much if at all. We would have been able to manage our way through it. But it's apparent we're just going to duck the job now and back down on our decision and I was looking forward to just the challenge of providing for everybody's needs.
So with that maybe we'll go to a roll call vote.

MR. EDWARDS: Mr. Chairman.

CHAIRMAN DEMENTIEFF: Gary.

MR. EDWARDS: If I may, I would like to give a little bit of rationale for why I made the motion that I made.

CHAIRMAN DEMENTIEFF: Go ahead.

MR. EDWARDS: Okay. Like the other Board members, I've certainly tried to wrestle with what is obviously a very tough decision. I tried to carefully review the Staff analysis and all their supporting material and I certainly want to thank them for a yeoman's job in trying to put this together. And I also appreciate the public testimony, both that we heard today and in the past. I think it was helpful to try to sort through both issues. And I guess I particularly want to, although they're not represented here, our Regional Advisory Council, who showed an awful lot of patience on this and want to thank them for their continued involvement.

But as I reviewed the Staff analysis, you know, I found several of the claims presented by the requesters for reconsideration to have merit. You know, I concur with the claim that the Board deviated from its normal process specified in its own regulations for making rural determinations. And after the Board verified the reasonableness of the aggregation of the Kenai, Homer and Seward areas then the Board did not then acknowledge the presumption of non-rural status based upon their population being in excess of 7,000 threshold and then reviewing the community characteristics to determine that they possess significant rural characteristics that would overcome the non-rural presumption. Given the Kenai areas large population that is similar to Juneau and twice the size of Ketchikan which are designated as non-rural, the non-rural presumption is a very high bar for us to try to get over.

I also think that the requesters correctly identified a need to compare the community characteristics of the Kenai Peninsula communities and areas with those of the communities listed by Congress as examples of rural and non-rural communities in the Legislative history of Title VIII. Such comparisons were not built into the population threshold established by the Board for rural determinations.
in 1990. Therefore, the comparisons provided in the Staff
analysis are a useful addition to information available to
the Board and provide an improved basis for a well
considered decision. The Congressional list examples of
rural and non-rural communities are perhaps the best
available indication of Congressional intent on the meaning
of rural for providing a subsistence priority. These
examples were used by the Board in 1990 to establish the
presumption population threshold used as the principal but
not the sole basis for determining non-rural communities in
areas. The Board's regulations reflects its understanding
that communities in areas with populations greater than
7,000 would rarely be determined to be rural. The non-
rural presumption would logically only be stronger with
increasing large populations. In 1990, the Board
determined the Kenai, Homer and Seward areas on the Kenai
Peninsula were non-rural based upon their population size
and community characteristics. At the same time the Board
determined that Sitka and Kodiak, both communities
initially presumed non-rural were rural on the basis of
their community characteristics. The Board reevaluated its
non-rural determination for the Kenai Peninsula in 1999 in
a response for reconsideration and on that reconsideration
the Board reaffirmed its early decision determining that
the procedures used was appropriate and the non-rural
designation was correct. The fact that the Board
reaffirmed its Kenai Peninsula determination following
careful consideration of the testimony arguments and with
its previous decision to designate Sitka and Kodiak as
rural communities fresh in mind demonstrates the
unequivocal nature of the Board's determination at that
time. Since the 1991 determination in the three areas on
the Peninsula, particularly the Kenai area has had
significant increases in population, continuing community
development and substantial economic growth and
diversification. This population size and urbanization
makes the case for non-rural determination more compelling
than ever.

There is no question, as other Board
members say, that the Kenaitze Indian Tribes have had a
long history of occupation and use of fish and wildlife on
the Kenai Peninsula, however, the use of fish and wildlife
by the Kenaitze, as important as it may be to them, must be
considered in the context of the entire communities of
which they are a part and in combination with other
community characteristics when the Board determines whether
those communities are rural. A community must be rural in
character, considered as a whole with respect to several
factors if it is determined to be rural.
I believe designated the non-rural community or area as rural in order to establish subsistence eligibility for a small minority of the population would not be in the best long-term interest of all those affected by the designation or the Federal subsistence program as a whole. Engulfment by urbanization has been an unfortunate development for the Kenaitze Tribe in the heavily populated areas of the Kenai Peninsula and in fact, for Natives in some of the areas of Alaska, Native groups in non-rural areas find it difficult to continue customary and traditional practices within the framework of non-subsistence regulations. However, this is a consequence that Congress clearly understood when it mandated that only rural Alaskans would be accorded a subsistence preference when it anticipated that communities could change from rural to non-rural through growth and development. Congress recognized that residents of non-rural communities harvest renewable resources from the public lands for personal or family consumptions but made clear that subsistence use is done only by residents of rural Alaska.

Based upon that, Mr. Chairman, I plan to support the motion.

CHAIRMAN DEMIENTIEFF: Thank you. Can we take a roll call vote, Tom, please?

MR. BOYD: Yes, Mr. Chair. Mr. Cesar.

MR. CESAR: No.

MR. BOYD: Ms. Gottlieb.

MS. GOTTLIEB: Yes.

MR. BOYD: Mr. Cherry.

MR. CHERRY: Yes.

MR. BOYD: Mr. Edwards.

MR. EDWARDS: Yes.

MR. BOYD: Mr. Caplan.

MR. CAPLAN: Yes.

MR. BOYD: Mr. Chair.
CHAIRMAN DEMIENTIEFF: No.

MR. BOYD: Mr. Chair, I have four votes approving the motion and two votes opposing the motion.

CHAIRMAN DEMIENTIEFF: Okay, with that, it concludes our business. I, too, want to add my thanks to everybody who has put in all the hard work. I urge you to work together down there on the Peninsula to make it a better place for all of you. And I want to thank, especially the Egan Convention Center Staff for getting the furnace working, finally.

MR. CESAR: Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Yes.

MR. CESAR: Just one point. I would like the minority Staff report written into the record if at all possible. (SEE PAGE 78)

CHAIRMAN DEMIENTIEFF: Yes. I, too, have a written personal statement. I didn't give the whole statement but I'm going to enter the whole thing into the record. I could see the handwriting on the wall and I didn't want to go ahead with that. So, yes, I will submit mine later on here. (SEE PAGE 75)

Yeah, that being it, let's go find somewhere cooler to hang out and we shall be adjourned.

STATEMENT OF MITCH DEMIENTIEFF: I have reviewed the Office of Subsistence Management Staff analysis of the request for reconsideration of the Board's May 2000 Kenai Peninsula rural determination, the written comments and listened carefully to the public testimony. Based on the information presented, I am not persuaded that the Board's May 2000 decision was incorrect. I am going to vote to affirm the May 2000 decision based on the rationale and justification set forth in Option 1 of the Staff analysis.

The Staff analysis of the two requests for reconsideration fully supports the Board's previous decision. No new evidence has been presented that was not already considered by the Board in past deliberations. The Staff analysis found only seven claims that needed to be addressed. Those claims were grouped into four issues, aggregation, population, flawed methodology and ANILCA intent. In the analysis of the four issues it is plan that
all of the issues were thoroughly considered by the Board in making its May 2000 decision to find the communities on the Kenai Peninsula rural.

Aggregation. I do not agree that the communities on the Kenai Peninsula should have been aggregated before the Board considered each community's population. The Federal regulations require that communities be reviewed by population and then aggregated. This was not done on the Kenai Peninsula. In 1990 and 2000 no single community on the Kenai exceeded the 7,000 threshold population. Nevertheless, the Board accepted the 1990 aggregations when it rendered its decision in May 2000. We acknowledged that there were flaws in the methodology and that the evidence for aggregation was weak with respect to Kenai communities, but we nonetheless accepted those aggregations. Our decision was based on an evaluation of the community characteristics, in general, of the three aggregated areas. The ISER report was likewise based on the Federal aggregations of the Kenai communities. Therefore, I am not persuaded by the arguments made by the two requesters. The Board evaluated the three aggregated communities and concluded that they possessed significant characteristics to Kodiak and Sitka.

Population. It is important to keep in mind that exceeding the 7,000 population means only that an area is presumed to be urban unless the community or area has significant characteristics of a rural nature. Both Kodiak and Sitka exceeded 7,000 in 1990 and were determined to be rural. In evaluating the community characteristics of the three aggregated areas on the Kenai Peninsula, I find that there is a mix of rural and non-rural characteristics similar to the ANILCA-suggested examples of rural and with Kodiak and Sitka. In terms of the use of fish and wildlife, there is very limited data available for the Kenai Peninsula communities, but their relatively lower harvest levels are similar to other road connected communities. An additional factor that must be considered with regard to the Kenai Peninsula communities is the fact that the State's own studies and the materials submitted by the Kenaitze and others who live on the Kenai Peninsula demonstrate that on a community wide basis, subsistence hunting and fishing remains a principal component of the economy, culture and way of life of the communities on the Kenai Peninsula. Centrally, the Kenaitze's rural subsistence lifestyle has persisted despite population increases and significant restrictions. It is perfectly understandable that their harvest levels would be low since subsistence hunting and fishing have been heavily
It has not gone unnoticed that the Kenai Peninsula is considered rural for practically every other Federal purpose but subsistence. In evaluating the community characteristics of the Kenai Peninsula areas in relation to the ANILCA-suggested examples, along with the other examples suggested by requesters and ISER, I am convinced that the communities on the Kenai Peninsula, as aggregated, have a predominately rural nature and that the determination of the whole Kenai Peninsula as rural should be affirmed.

Flawed Methodology. This issue of flawed methodology was raised during the Board's deliberations on whether to undertake an out of cycle review of the Kenai Peninsula communities. The Regional Advisory Council and the Kenaitze Tribe raised serious questions about the Board's original rural determinations. The Boar felt that creating a better methodology could be done after the 2000 Census figures were available and viewed it as a separate issue. I still think that is a separate issue. The communities on the Kenai Peninsula are entitled to an evaluation using the same criteria used to evaluate the rest of the state. After hearing testimony from the public and Regional Council Chairman, the Board voted unanimously to undertake the out of cycle review. I think that was the right decision and nothing I've heard today changes my mind.

ANILCA Intent. The requestors claim that the Board should have compared Kenai communities with those specified by Congress as rural, as well as those designated non-rural communities. This ignores the fact that the regulations were developed actually using the Legislative history. In other words, that analysis (comparison to the communities specified by Congress as rural) is built into the regulations. I also believe the comparisons between Kenai communities and Sitka, Saxman and Kodiak were appropriate. The Board initially proposed finding those communities non-rural just like the Board did with the Kenai communities. The Board changed its decision with respect to Sitka and Kodiak based on special factors. The Kenaitze request was simply judged under that same standard, the one applied elsewhere in the state in 1990.

Although the Board voted to accept the requests for reconsideration because it felt some of the claims might have merit, based on the Staff analysis and
all the evidence presented to the Board, including the public testimony, I have not seen any new information that would warrant a reversal of the Board's May 2000 decision.

Finally, I want to make it plain that I do not support Option 3. This Board should not defer this decision until new methodology can be developed. We have twice rejected that option. The public has to have confidence in this Board. If the public process means anything, it means that the Kenaitze and the public are entitled to a final decision.

I am voting in favor of adhering to our May 2000 decision.

STATEMENT OF NILES CESAR: The Bureau of Indian Affairs (BIA) Subsistence Staff recently reviewed the Office of Subsistence Management Staff analysis of the Request for Reconsideration of the Kenai Peninsula Rural Determination, RFR00-02. BIA strongly supports Option 1 to affirm the May 2000 decision that the entire Kenai Peninsula is rural. The rationale for this position has not changed from that presented to the Staff Committee minority report adopted by the Federal Subsistence Board (Board in May 2000. The salient points were:

The Southcentral Regional Subsistence Advisory Council (Council) voted in favor of a rural designation on three separate occasions.

The Board delayed reconsideration of the non-rural designation until the Council completed a series of public meetings to ascertain public opinion throughout the Kenai Peninsula. Prior to the May 2000 meeting, some Board members felt that to further delay a decision was not a reasonable course of action.

Many Federal agencies provide services to Kenai Peninsula communities because of their rural nature.

When considered in its' entirety, the population density of the Kenai Peninsula Borough is relatively low.

The local use of fish and wildlife resources is reduced due to State regulatory schemes and the road system because of lost opportunity or competition from non-local users.

The lifestyle on the Kenai Peninsula is
diverse, however, it can be generally characterized as rural.

Population alone does not determine rural non-rural status and therefore evaluation of rural characteristics of the area should precede attempts to aggregate communities.

The primary mission of Federal fish and wildlife management is the health of the resource and, as some suggest, a Kenai Peninsula rural designation will not impact the long-term viability and health of fish and wildlife populations.

The Staff analysis of RFR00-02 is comprehensive and, upon review of the analysis it is not clear that the Safari Club International et al., and the Cooper Landing Fish and Game Advisory Committee (Requestors) have met the requirements for reconsideration. The Requestors submitted 19 claims and of these only seven were found to merit further consideration. The seven were grouped for analysis into four issues; aggregation, population, flawed methodology and ANILCA-intent. The respective Staff analysis of each issue is summarized as follows:

Aggregation. The Staff analysis found that the aggregations made in 1990 (using the 1990 model with updated population data) should remain the same. This was the same information and recommendation before the Board in May 2000 when it decided that the entire Kenai Peninsula was rural. BIA interpretation of the Staff analysis indicates that Requestors Claims 9, 11 and 13 do not meet the threshold necessary for reconsideration.

Population. The Staff analysis concluded that the regulatory process was correctly implemented through the following three steps (RE: Claims 6, 11 and 13), reevaluated indicators of community characteristics for the Kenai, Homer and Seward Areas using the most recent population figures and data available, Council public meetings and consideration of public testimony and Board determination that the entire Kenai Peninsula is rural.

Flawed Methodology. The Staff analysis does suggest that the current method used to evaluate rural non-rural status has some deficiencies, however, the model and data currently used are the best available at this time (Claim 12). Therefore, the Staff analysis did not characterize the existing model as flawed.
Additionally, with respect to Claim 17, the Board unanimously decided that the regulatory requirements of special circumstances for an out of cycle determination were met and properly addressed.

ANILCA Intent. The Staff analysis goes into some detail examining Board compliance with ANILCA requirements (Claim 14). The analysis does not suggest that the Board is not compliant with ANILCA and BIA Staff interpret this to mean that the requestors' claim does not meet the threshold for reconsideration.

The Board accepted the request for reconsideration because it determined some of the requestors' claims may have merit and directed Staff to conduct an analysis on the issues raised. Noticeably absent from the Staff analysis is a response to the Board concerning the merit of the claims pursuant to criteria established in the Revised Board Policy on requests for reconsideration. Based on the Staff analysis, it appears the requesters did not meet this threshold. The requestors failed to provide information not previously considered by the Board that demonstrates the existing information is incorrect or demonstrates the Board's interpretation of information, applicable law or regulation is in error.

Although the Board accepted the request for reconsideration it is evident, based on the Staff analysis, that there is no new information to warrant a reversal of the May 2000 decision. The Staff analysis offers three decision options for the Board to consider, however, the BIA continues to support the position of some Board members that deferral of a decision is not reasonable and has twice on record been rejected by the Board.

The BIA recommends that the Board support Option 1 to affirm the May 2000 decision. It is important that the Board be viewed as a credible body and reversal of this decision may result in a perception that jurisdictional Federal management of fish and wildlife resources lacks consistency. In addition, although the Board does not defer to the Council on questions of rural designation, when the preponderance of evidence is not conclusive for either rural or non-rural status, the public might logically assume that their participation through the Council process and the Council's resultant recommendation would be an important factor in decision, as mandated by Federal regulations.

It is my intention to include this
MINORITY KENAI RURAL: A minority of Staff Committee members supported the Board's decision of May 2000. Based on Staff analysis, the request for reconsideration by both parties did not meet the Board's threshold established in the revised Board policy for requests for reconsideration. Specifically, the requestors failed to provide information not previously considered by the Board that demonstrates the existing information is incorrect or that demonstrates that the Board's interpretation of information, applicable law or regulations is in error. Although the Board has accepted the request for reconsideration, it is evident, based on the Staff analysis, that there is no new information to warrant a reversal of the May 2000 decision.

The Staff minority supports the public process as implemented by the Southcentral Regional Advisory Council, which has three times recommended that the Board reclassify the entire Kenai Peninsula as rural. The primary purpose of the Federal Subsistence Board is to afford a subsistence priority use over all other uses to those people dependent on that subsistence use. The testimony presented to the Board show a clear and continuing subsistence need by the Kenaitze and other rural users on the Kenai Peninsula. Therefore, the Board is mandated by Title VIII of ANILCA to find the; is that right? as rural for purposes of subsistence and must uphold its May 2000 decision that the entire Kenai Peninsula is rural.

The minority position differs with the Staff analysis because the analysis did not fully address the issues and concerns raised by the ISER report and prior concerns regarding the aggregation factors expressed by the technical peer review of the February 2000 analysis concerning the criteria used and the validity of the data for aggregation. Since the analysis did not address these issues, the minority concludes that the decision to aggregate does not fully reflect all of the information used by the Board to make its May 2000 decision.

In 1990 the decision to aggregate 18 communities into three areas within the Kenai Peninsula was an important element in the Board's initial non-rural determination. In 1998, research conducted by ISER and Staff analysis shed doubt on the 1990 application of the criteria used to aggregate these communities and suggested
that aggregation masked many rural characteristics.

Federal regulations require that communities be reviewed by population and then aggregated. This was not done on the Kenai Peninsula, where aggregation was done before considering population as required in Federal regulations. This is the violation of Equal Protection and Due Process that the Kenaitze Tribe has requested the Board to redress.

In 1990 and 2000 no single community on the Kenai Peninsula exceeded the 7,000 threshold to be presumed non-rural. According to Federal regulations (50 CFR100 and 36 CFR242) populations of 2,500 or less shall be deemed to be rural, populations of 2,500 or above but not more than 7,000 will be determined to be rural or non-rural, populations more than 7,000 shall be presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature. Based on Federal regulations and using 2000 population census, 11 of the 18 communities were rural. Seven of the remaining communities were in the middle category with Kenai at a population of 6,942, Homer 3,946 and Seward 2,830.

Therefore, 11 communities could be determined to be rural and seven could be determined rural or non-rural by the Board. These population figures are similar to the ANILCA rural examples of Barrow, Bethel, Dillingham, Kotzebue and Nome whose populations range from 1,563 and 3,576 in 1980 to 2,004 and 3,681 in 1984. In evaluating the community characteristics of the Kenai Peninsula aggregated areas in relation the ANILCA-suggested examples of rural communities, the aggregated areas of the Kenai Peninsula have a predominately rural nature. In addition the ISER report and the Ninth Circuit Court Opinion in Kenaitze v. Alaska discussed the population density of the Kenai Peninsula and questioned the non-rural classification.

Yet as population figures alone are not the sole determinants of rural or non-rural status, the Board must also consider other factors and the fact that State regulations have systematically restricted subsistence uses and prohibits subsistence altogether on the Kenai Peninsula since statehood. These State regulations must be considered when relying upon ADF&G harvest data as a criteria to measure subsistence uses on the Kenai Peninsula. When subsistence is not recognized on the Kenai Peninsula, there can be no data showing subsistence use or harvest. The State categories of personal use and sports
use are not considered as subsistence use and therefore not counted as subsistence harvest. In addition, subsistence users are severely restricted by lost opportunity or competition from non-local users.

Testimony provided to the Board emphasized the time depth and cultural significance of the subsistence harvesting traditions of the Kenaitze and other rural residents on the Kenai Peninsula. In addition, ADF&G in their testimony pointed out that they recognized these subsistence uses through cultural and educational use permits on the Kenai Peninsula. Although the lifestyle on the Kenai Peninsula is diverse, it can generally be characterized as rural and when considered in its entirety, the population densities of the Kenai Peninsula Borough is relatively low.

(END OF PROCEEDINGS)
CERTIFICATE

UNITED STATES OF AMERICA  )
)ss.
STATE OF ALASKA  )

I, Salena A. Hile, Notary Public in and for the
state of Alaska and reporter for Computer Matrix Court
Reporters, LLC, do hereby certify:

THAT the foregoing pages numbered 02 through 83
contain a full, true and correct Transcript of the FEDERAL
SUBSISTENCE BOARD PUBLIC MEETING taken electronically by me
on the 29th day of June 2001, beginning at the hour of 1:00
o'clock p.m. at the Egan Convention Center, Anchorage,
Alaska;

THAT the transcript is a true and correct
transcript requested to be transcribed and thereafter
transcribed by my direction and reduced to print to the
best of our knowledge and ability;

THAT I am not an employee, attorney, or party
interested in any way in this action.

DATED at Anchorage, Alaska, this 4th day of July

______________________________
Salena A. Hile
Notary Public in and for Alaska
My Commission Expires: 09/05/2002