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Federal Subsistence Board

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FOREST SERVICE

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AUG 15 2014

Honorable Sally Jewell
Secretary of the Interior
U.S. Department of the Interior
Office of the Secretary
1849 C Street, Northwest
Washington, DC 20240

Honorable Tom Vilsack
Secretary of Agriculture
U.S. Department of Agriculture
Office of the Secretary
1400 Independence Avenue, Southwest
Washington, DC 20250

Dear Secretaries Jewell and Vilsack:

In October 2009, Secretary of the Interior Salazar announced a review of the Federal subsistence program. The review was intended "to ensure that the program is best serving rural Alaskans and that the letter and spirit of Title VIII [of ANILCA] are being met." Secretary Salazar, with the concurrence of Secretary of Agriculture Vilsack, requested that the Federal Subsistence Board initiate a number of actions, one of which was to develop recommendations for regulatory changes to the process of making rural/non-rural determinations in Alaska.

The Federal Subsistence Board respectfully submits the following recommendation for improving the rural/non-rural determination process, which was adopted at its April 15-18, 2014 public meeting. Secretarial action is needed to implement this recommendation because 36 CFR 242 subpart B and 50 CFR 100 subpart B are under Secretarial purview. We begin with a brief summary of events leading up to the Board's recommendation.

Background

At its January 2012 public meeting, the Federal Subsistence Board elected to conduct a global review of the rural/non-rural determination process, starting with public and Subsistence Regional Advisory Council input. The global review provided the Board with a rationale to stay its 2007 final rule, whose rural provisions would otherwise have gone into effect in May 2012.

The Board determined that the 1991 rural/non-rural determinations would remain in place pending the outcome of its review of the rural determination process (77 FR 12477); March 1, 2012. The conclusion of the review, and the determinations of rural status, must be completed by March 2017.

Two areas of Alaska—the community of Saxman and the Kenai Peninsula—have proven difficult for the Board to categorize under the current rural determination process. In a November 23, 1990 Federal Register notice (55 FR 48877), the Board proposed Saxman to be non-rural, “[b]ecause of Saxman’s close proximity to Ketchikan; because Saxman shares a common school district and Saxman residents make daily or semi-daily shopping trips to Ketchikan; and greater than 15 percent of the working population of Saxman commutes to Ketchikan to work.” In other words, Saxman was socially and economically integrated with neighboring Ketchikan, and not a separate rural community.

In a January 3, 1991 final rule (56 FR 236), the Board reversed its proposal and concluded that Saxman was rural, “because of its character composition and personality not because of the number of people living there.” The Board goes on to note that “Saxman possesses both rural and non-rural characteristics; therefore, based on extensive public testimony, the Board has determined Saxman to be rural for the purposes of subsistence on Federal lands.”

In a May 7, 2007 final rule (72 FR 25688), the Board reversed itself and determined that Saxman was non-rural, based on criteria used to aggregate communities: “The Board made a determination to group all of the road-connected areas, including Waterfall subdivision and Saxman, as well as Pennock Island and parts of Gravina Island, in the Ketchikan Area.” The Board’s reasoning was based on consistency of use of aggregation criteria: “Given comments about the need for consistency of application of the criteria for grouping of communities, and the information on Saxman relative to those criteria, the Board grouped Saxman with the non-rural Ketchikan area.” The three aggregation criteria the Board used are these: 1) Do 30 percent or more of the working people commute from one community to another? 2) Do they share a common high school attendance area? and 3) Are the communities in proximity and road-accessible to one another?

At its April 2014 public meeting, the Board discussed reclassifying Saxman as rural, in part based on the problematic nature of the aggregation criteria. The Board emphasized that Saxman’s rural characteristics may contradict grouping it with Ketchikan.

The Kenai Area has similarly proven problematic under the current rural determination process, in part because all of the communities in the area are road-connected. In the January 3, 1991 final rule, the Board determined that the Kenai Area was non-rural—including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifonsky, Kasilof, and Clam Gulch—based on aggregating into a single population communities that were perceived as socially and economically integrated.

At a May 4, 2000 public meeting, the Board reversed its 1991 ruling, and determined that all of the Kenai Peninsula was rural (65 FR 40730). The Federal Register final rule noted the following:

The Board, after hearing a summary of the staff report [on rural characteristics], including oral and written comments on the Proposed Rule, receiving a recommendation from the Southcentral Regional Advisory Council, and receiving testimony from the State of Alaska, and numerous interested citizens, deliberated in open forum and determined that the entire Kenai Peninsula should be designated rural.

The next year, at a June 25, 2001 public meeting, the Board rescinded its rural determination from the prior year, and subsequently published a determination of the Kenai Area as non-rural in a May 7, 2002 Federal Register notice (67 FR 30559). This Federal Register notice contained neither background on nor summary of the reasons for the Board rescinding its 2000 determination that all of the Kenai Peninsula was rural.

Based on the Secretaries' directive and these high-profile back-and-forth changes in rural status using the current rural determination process, the Board decided to engage in a year-long, public review of the current process. In December 31, 2012, the Board identified five elements in the rural determination process for public review (77 FR 77005): population thresholds; rural characteristics; aggregation of communities; timelines, and information sources. The Board posed eight general questions for public input concerning these five elements, and one question requesting any additional information. The comment period was open to November 1, 2013, which was extended to December 2, 2013 because of the partial federal government shutdown in October.

The Subsistence Regional Advisory Councils were briefed on the Federal Register notice during their winter 2013 meetings. At their fall 2013 meetings, the Councils provided a public forum to hear from residents of their regions, deliberate on the rural determination process, and provide recommendations for changes to the Board.

Testimonies from members of the public were also recorded during separate hearings held to solicit comments on the rural determination process. The Board held hearings in Barrow, Ketchikan, Sitka, Kodiak, Bethel, Anchorage, Fairbanks, Kotzebue, Nome, and Dillingham. Government-to-government consultations on the rural determination process were held between members of the Board and Tribes, and additional consultations were held between members of the Board and Alaska Native corporations formed under the Alaska Native Claims Settlement Act.

In aggregate, the Board received 475 substantive comments from various sources, including individual citizens, members of regional advisory councils, and other entities or organizations, such as non-profit Alaska Native corporations and borough governments.

Based on Council and public comments, government-to-government and Alaska Native corporation consultations, and briefing materials from the Office of Subsistence Management, the Board developed a recommendation that simplifies the process of rural/non-rural determinations, as shown below.

Federal Subsistence Board Recommendation

§242.15 and §100.15. Rural determination process.

(a) The Board shall determine if ~~an~~ which areas or ~~community~~ communities in Alaska is are rural-non-rural.

(b) All other communities and areas are therefore rural.

~~In determining whether a specific area of Alaska is rural, the Board shall use the following guidelines:~~

~~(1) A community or area with a population of 2,500 or less shall be deemed to be rural unless such a community or area possesses significant characteristics of a non-rural nature, or is considered to be socially and economically a part of an urbanized area.~~

~~(2) Communities or areas with populations above 2,500 but not more than 7,000 will be determined to be rural or non-rural.~~

~~(3) A community with a population of more than 7,000 shall be presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature.~~

~~(4) Population data from the most recent census conducted by the United States Bureau of Census as updated by the Alaska Department of Labor shall be utilized in this process.~~

~~(5) Community or area characteristics shall be considered in evaluating a community's rural or non-rural status. The characteristics may include, but are not limited to:~~

~~(i) Use of fish and wildlife;~~

~~(ii) Development and diversity of the economy;~~

~~(iii) Community infrastructure;~~

~~(iv) Transportation; and~~

~~(v) Educational institutions.~~

~~(6) Communities or areas which are economically, socially, and communally integrated shall be considered in the aggregate.~~

~~(b) The Board shall periodically review rural determinations. Rural determinations shall be reviewed on a 10-year cycle, commencing with the publication of the year 2000 U.S. census. Rural determinations may be reviewed out of cycle in special circumstances. Once the Board makes a determination that a community has changed from rural to non-rural, a waiting period of 5 years shall be required before the non-rural determination becomes effective.~~

(c) Current determinations are listed at §100.23 and §242.23.

Rationale

Beginning in January 2013, the Board collected information from Subsistence Regional Advisory Councils, Tribes, Alaska Native corporations, and the public on the rural determination process. In general, this information indicates a broad dissatisfaction with the current process.

Aggregation criteria are perceived as arbitrary. Current population thresholds are seen as inadequate to capture the reality of rural Alaska. The decennial review is widely understood as unnecessary.

Based on this information, the Board elected to simplify the process by determining which areas or communities are non-rural in Alaska; all other communities or areas would therefore be rural. The Board intends to make non-rural and rural determinations using a holistic approach that relies on best available data and information provided by the public, and that takes into consideration population size and density, economic indicators, military presence, industrial facilities, use of fish and wildlife, degree of remoteness and isolation, and any other relevant information. The Board also intends to rely strongly on the recommendations of the Subsistence Regional Advisory Councils.

If the Secretaries adopt the Board's recommendation, a series of steps are required in order to meet the March 2017 deadline.

Next Steps

- The Secretaries may decide to propose a rule to change the current rural determination process, based on the Board's recommendation. The Secretaries would need to act on this recommendation because it affects 36 CFR 242 Subpart B, and 50 CFR 100 Subpart B, which are under Secretarial purview. The public, Regional Advisory Councils, Tribes and Alaska Native corporations would have the opportunity to comment or consult during that rule-making process.
- The Secretaries could then decide to publish a final rule specifying the rural/non rural determination process. The revised process appears in Subpart B of subsistence regulations, under Secretarial authority.
- The Board uses that rule to make rural/non-rural determinations, publishing those determinations in a proposed rule. The public, Regional Advisory Councils, Tribes and Alaska Native corporations would have the opportunity to comment or consult during that rule-making process.
- The Board then publishes a final rule with the revised rural/non-rural determinations. The revised rural/non-rural determinations appear in Subpart C of subsistence regulations, under Board authority.

- If no new rule making is completed by March 1, 2017, specifying rural/non-rural determinations, then the 2007 rule will become enforceable.

Thank you in advance for your timely response to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Towarak". The signature is fluid and cursive, with the first name "Tim" being more prominent than the last name "Towarak".

Tim Towarak
Chair

cc: Federal Subsistence Board

Pat Pourchot, Special Assistant for Alaska Affairs, DOI
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Administrative Record