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FEDERAL SUBSISTENCE BOARD
RURAL DETERMINATION PROCESS PUBLIC COMMENT
BEFORE HEARING OFFICER
JACK LORRIGAN

North Slope Borough Assembly Chambers
Barrow, Alaska
August 20, 2013
7:15 o'clock p.m.

Presenter: Dr. David Jenkins
Office of Subsistence Management

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P R O C E E D I N G S

(Barrow, Alaska - 8/20/2013)

(On record)

HEARING OFFICER LORRIGAN: Good evening everybody. I'd like to welcome everybody that is here tonight, thank you for coming.

I see we have the RAC present, would you like to introduce yourselves, please.

CHAIRMAN BROWER: Do you want us to come to the microphone, Tina?

REPORTER: I'll just turn this one on, I can pick you up. Go ahead, Harry.

CHAIRMAN BROWER: Good evening. My name is Harry Brower. I'm the Chair of the Regional Advisory Council.

MR. SHEARS: Good evening. Member representing Wainwright and Barrow, Bob Shears.

MR. J. NAGEAK: James Nageak, Anaktuvuk Pass.

MR. KOYATUK: Lee Koyatuk, Kaktovik, Alaska.

ROSEMARY: Rosemary A*, Barrow.

MR. FRANKLIN: Ted Franklin, Jr., from Point Hope.

HEARING OFFICER LORRIGAN: Thank you. Members of the public, would you care to introduce yourself.

MR. PETERSON: Mike Peterson. North Slope Borough, Department of Wildlife Management, Barrow.

MS. BEHE: Carolina Behe with the Inuit Circum Polar Council.

HEARING OFFICER LORRIGAN: Thank you, everybody. I wanted to thank you for attending tonight's hearing. This is an opportunity for the public to

1 provide input to the Federal Subsistence Board's rural
2 determination process. The Board is accepting comments
3 until November 1st, 2013. Tonight will be an opportunity
4 for you to provide oral or written comments.

5
6 My name is Jack Lorrigan, I'm the Native
7 Liaison for the Office of Subsistence Management. And
8 tonight I'm here serving as the hearing officer for this
9 hearing. My job is to make sure that everyone here who
10 would like to make oral or written comments have the
11 ability to do so. The meeting has been scheduled to last
12 until 9:00 in order to receive all your comments.

13
14 We have with us tonight, court reporter,
15 Salena Hile, who will record and then transcribe your
16 comments.

17
18 During the comment portion of the meeting
19 we will not be answering any questions allowing us time
20 to listen and to hear your comments.

21
22 We have information on the information
23 table that will illustrate where other hearings or
24 opportunities to comment are available. Our website
25 should be on that information also.

26
27 Because of the importance of your
28 comments it is necessary that we follow certain
29 procedures during the meeting. As you entered the
30 meeting room you were asked to sign in. It is important
31 that every person present sign in so we have a complete
32 record of all persons who attended or participated in
33 this meeting. If you plan to make oral comments tonight,
34 please, fill out a speaker card, like this. Also if you
35 are attending this meeting or submitting comments on
36 behalf of a group or organization, please indicate the
37 name of the group or entity you represent. Let me
38 emphasize that the principle purpose of the public
39 hearing of this meeting is to receive information and
40 comments from you on the record. Please limit your
41 comments -- well, we won't have to worry about that
42 tonight -- if we run out of time please submit your
43 comments in writing prior to November 1st, 2013.
44 Handouts are available with contact and address
45 information.

46
47 No Board member at the moment.

48
49 We have with us, David Jenkins, from the
50 Office of Subsistence Management, and he'll be presenting

1 the PowerPoint presentation on the rural criteria that
2 the Board is seeking comments on so I'll turn the floor
3 over to David.

4
5 DR. JENKINS: Thank you, Jack. Good
6 evening everybody. My name is David Jenkins and I'm with
7 the Federal Subsistence Management Program. And as you
8 know the management program includes the Fish and
9 Wildlife Service, the Forest Service, the National Park
10 Service, the Bureau of Indian Affairs and the Bureau of
11 Land Management. The program is responsible for managing
12 subsistence fisheries and wildlife on Federal public
13 lands.

14
15 What I'm going to talk to you tonight
16 about is the about the rural determination process and
17 I'm going to try to explain to you how the process works
18 and how you all can be part of the process as public
19 members. So I'm going to talk about the actions that
20 have brought us here and we're looking to improve ways to
21 -- or improve the way the rural and nonrural
22 determination process functions and how those rural
23 determinations are made.

24
25 Some background on the rural
26 determination process. We're going to go through why
27 we're here, the framework of the process; questions that
28 we would like you all to address; the kinds of resources
29 that you'll have available to you, and; finally how you
30 can provide comments. We'll go through each of these one
31 at a time.

32
33 Next.

34
35 Now, in December of 2010 the Secretaries
36 of the Interior and Agriculture directed the Federal
37 Subsistence Board to conduct a review of the rural
38 determination process. That is the process in making
39 rural and nonrural determinations in the state of Alaska.
40 So what we're interested in are the methods that are
41 being used, and we want to know are these methods
42 relevant to subsistence users or rural people in Alaska,
43 and nonrural people, too, because people who live in
44 other areas also have a stake in the decision of what's
45 rural and what's not. So the Board is seeking Regional
46 Advisory Council input, which, as a Council you can
47 provide tomorrow during your regular RAC meeting, we're
48 looking for public input which is what we're asking for
49 tonight. We've conducted tribal consultations and will
50 continue to conduct tribal consultations on the rural

1 process, and also corporation consultations. The goal is
2 to develop recommendations to improve the process. If we
3 develop these recommendations we'll develop them for the
4 Federal Subsistence Board and then the Board will make
5 those recommendations to the Secretaries of Interior and
6 Agriculture.

7
8 So the general framework is ANILCA, which
9 provides a rural priority, a rural subsistence priority
10 and only residents of rural communities or areas are
11 eligible for that priority. These are things that you're
12 all aware of. The map at the bottom there shows the
13 extent of Federal public lands in green. So only
14 residents of rural communities are eligible for the
15 subsistence priority. So the question is; what is a
16 rural area? How do we distinguish rural areas from
17 nonrural areas?

18
19 The other part of the framework that we
20 have to work with are court decisions, and, in particular
21 a Ninth Circuit Court of Appeals Decision from 1988,
22 which defined rural in ANILCA, and that court decision
23 defined rural as sparsely populated, which was the
24 primary indicator of a rural area. And the Court
25 indicated that hunting and fishing, that is subsistence,
26 was not the primary marker of what's rural but it was an
27 important marker that should be considered but it wasn't
28 the primary marker. And the Court noted, I want to read
29 you this phrase from the Court, the Court noted that
30 Congress did not limit the benefits of the statute, that
31 is, ANILCA, to residents of areas dominated by a
32 subsistence economy, instead it wrote broadly and gave
33 the statutory priority to all subsistence users residing
34 in a rural area. So this is what the Court said in 1988
35 and that still guides how we think of what is rural and
36 what isn't.

37
38 Go ahead.

39
40 So right now to determine rural, the
41 Federal Board goes through a number of steps.

42
43 It aggregates communities together and
44 I'm going to talk a little bit about that.

45
46 There are population numbers that the
47 Board uses for rural and nonrural areas.

48
49 There's a series of characteristics that
50 the Board considers.

1 Finally, the Board looks at this every 10
2 years and then there's a series of sources of information
3 that the Board is obligated to look at.

4

5 Go ahead.

6

7 So what does it mean to aggregate
8 communities.

9

10 The Board is interested in how
11 communities are economically, socially and communally
12 connected or integrated. And the way it looks at those
13 connections is based on these three criteria; do 30
14 percent or more working people commute from one community
15 to another; do they share a common high school attendance
16 area; and are the communities in proximity and road
17 accessible to one another.

18

19 Go ahead.

20

21 So the Board wants the public to answer
22 this question; are these ways of grouping communities
23 together to determine rural and nonrural status useful,
24 and if they're not could you tell us a better way to
25 group or aggregate communities together, socially and
26 communally and economically to think about this next
27 issue that we're going to bring up, which is, the
28 population threshold.

29

30 So the Board groups communities together
31 and once they're grouped together it measures their
32 populations. So at this point populations of 2,500
33 people and lower are presumed to be rural areas.
34 Populations between 2,500 and 7,000 there's no
35 presumption of rural or nonrural. So when groups of
36 people are between those figures the Board applies other
37 characteristics to determine rural status. And then,
38 finally, above 7,000, the Board presumes those
39 communities to be nonrural.

40

41 Okay.

42

43 So the Board also asked the question, are
44 these population threshold guidelines useful. Is 2,500
45 a useful figure? Is 7,000 a useful figure? And if
46 they're not useful, if they're not useful for your area
47 for thinking about what's rural and what isn't, are there
48 are other population thresholds that would be more useful
49 for determining rural status.

50

1 Okay.

2
3 So, in between, then, 2,500 and 7,000, in
4 between that, those population figures where there's no
5 presumption of rural or nonrural status the Board looks
6 at these characteristics, the use of fish and wildlife,
7 the economic and development of diversity of these
8 aggregated communities, this group of communities; the
9 infrastructure of those communities; transportation; road
10 networks; marine transportation, and so on, and
11 educational institutions, what sorts of educational
12 institutions are in that group of communities.

13
14 Okay.

15
16 The Board also asked are these
17 characteristics useful for thinking about what's rural
18 and what isn't on Federal lands in Alaska, and if they're
19 not, are there other characteristics that could be more
20 useful for the Board for thinking about rural status.

21
22 Go ahead.

23
24 And, then, finally, the Board looks at
25 timelines and information sources. Right now the Board
26 reevaluates rural status every 10 years based on the US
27 Census and then out of cycle in particular circumstances,
28 so it can reevaluate a community's status if it's asked
29 to reevaluate that status, if there's new information,
30 for example, that's given. And the information sources,
31 as I mentioned, was the US Census and the most recent
32 population data and also augmented by Department of Labor
33 statistics, Alaska Department of Labor statistics.

34
35 Go ahead.

36
37 So the Board would like to know, should
38 the Board continue to have a review of rural status every
39 10 years. If so, why; if not, why not is this 10 years
40 review a useful mechanism?

41
42 And, finally, information sources. We
43 continue to use the US Census and the Alaska Department
44 of Labor information, but the problem is, is the US
45 Census no longer collects some of the information that we
46 use, or have used in the past, for example, the commuting
47 from one to a community to another for work, the US
48 Census long form no longer collects that data, in fact,
49 the US Census doesn't have a long form anymore. So some
50 of the data that we used to collect to determine rural

1 status is not available to us at this point.

2

3 So the Board is asking, should we keep
4 that 10 year review or should we think of some other way
5 to review rural areas, and are there any other
6 information sources, for example, community assessments,
7 that could be useful for thinking what's rural and what's
8 not, and, then, finally, if you have any other comments
9 to give to the Board.

10

11 And here are the resources available to
12 you. We've got a website and we've got a Federal
13 register notice that came out in December of 2012 that
14 asks the questions that I just posed to you. We have
15 news releases. You can email us at subsistence@fws.gov,
16 there's our phone number available 800-478-1456 for those
17 on line -- hi Dan -- and then we have all of this
18 material out here on the table that you can pick up too.

19

20 Okay.

21

22 So, finally, how can you provide
23 comments.

24

25 Right now you can provide comments by
26 giving your testimony that's being recorded and your
27 comments will be transmitted to the Board. Tomorrow at
28 a RAC meeting, the public could then inform the RAC for
29 your deliberation as a Council on this same issue. You
30 can submit to us electronically at subsistence@fws.gov.
31 You can mail or hand deliver, to me or to Jack, if you
32 have written comments. And for those on line I'll just
33 read out the address for you, it's US Fish and Wildlife
34 Service, Office of Subsistence Management, 1011 Tudor
35 Road, MS121, Anchorage, Alaska 99503.

36

37 Okay.

38

39 So thank you very much and we are ready
40 for your testimony.

41

42 HEARING OFFICER LORRIGAN: Thank you,
43 David.

44

45 So at this time, if there's any
46 questions, we have a question and answer sheet at the
47 table, if you want to further explore your questions.
48 We've gone through possible questions the public may come
49 up with, with the answers to help guide you in the
50 comment process.

1 I guess I would like to open the floor to
2 public comment. If you're representing yourself, please
3 state your full name and assist the recorder with the
4 spelling; if you're affiliated with an organization or a
5 group, please say so; please speak clearly and succinctly
6 into the microphone. The time is now 7:30 and I'd like
7 to open the public hearing section of the meeting. So
8 far the only respondent I have is Mr. Mike Peterson, you
9 have the floor.

10

11 MR. PETERSON: Good evening. My name is
12 Michael Peterson and I'm the subsistence research
13 coordinator for the North Slope Borough Department of
14 Wildlife Management. I'm here representing the
15 Department on comments on the rural determination
16 process.

17

18 Before I begin I'd just like to say the
19 North Slope Borough Department of Wildlife Management has
20 -- we've worked very hard on a variety of subsistence
21 issues over the years, we belong to several co-management
22 organizations relating to marine mammals and migratory
23 birds, something of which the Federal Subsistence Board
24 doesn't necessarily deal with. We also work extensively
25 with the Alaska Department of Fish and Game on a variety
26 of subsistence issues in our region.

27

28 Title VIII of ANILCA was intended to
29 implement Congress' longstanding concern for and
30 obligation to protect the subsistence uses of Alaska
31 Natives, although the statute provides for a rural
32 preference, Congress found it necessary and in the
33 national interest to protect and provide the opportunity
34 for continued subsistence uses on public lands by Native
35 and non-Native rural residents. Because of the Federal
36 government's trust responsibility to Alaska Natives the
37 Federal Subsistence Board should give Title VIII of
38 ANILCA a liberal interpretation to insure that the
39 subsistence way of life will be protected, nowhere is
40 that obligation more important than in determining which
41 communities will be considered rural.

42

43 The Federal Subsistence Board should
44 adopt the methodologies outlined in the Wolf and Fisher
45 report. The Fish and Wildlife Service contracted with
46 the Institute of Social and Economic Research at the
47 University of Alaska in Anchorage and Robert Wolf, a
48 social-cultural anthropologist and former research
49 director for the Division of Subsistence in the
50 Department of Fish and Game to develop methodologies for

1 identifying rural and nonrural areas of Alaska for
2 purposes of Federal subsistence management. They looked
3 at a number of variables as potential factors and in
4 accordance with the overriding goals of using the minimal
5 number of criteria that would clearly and effectively and
6 defensibly distinguish between rural and nonrural
7 populations. They developed two measures of primary
8 rural and nonrural population; country food production
9 and population density; see methods for rural and
10 nonrural determinations for Federal subsistence
11 management in Alaska final report, analysis and
12 recommended methodology, January 31, 2003, Wolf and
13 Fisher 2003. The issues surrounding the aggregation of
14 populations for measurements and analysis were also
15 discussed in some detail in that report at Pages 47-59.
16 The Federal Subsistence Board, without explanation,
17 rejected these scientific methods of identifying rural
18 and nonrural areas in Alaska.

19

20 Population thresholds.

21

22 Population thresholds are arbitrary and
23 unnecessary. There is no empirical evidence to support
24 the use of population thresholds. Moreover the
25 population of an area depends entirely on how large you
26 draw the area being considered. The demarcation of rural
27 and nonrural populations vary considerably among
28 government programs so there are wide variations in the
29 cutoff use to distinguish between the two populations.
30 As detailed in the 2003 Wolf, Fisher analysis, there are
31 wide variations in the cutting point used operationally
32 to distinguish rural from nonrural. Their report found
33 rural/nonrural thresholds as high as 50,000 used by
34 government entities. For example, under the 1992
35 amendments to the Older American Act, the US
36 Administration on Aging defined urban areas as, No. 1.,
37 urbanized areas, a central place and its adjacent densely
38 settled territories with a combined minimum population of
39 50,000 and, No. 2, incorporated places or census
40 designated places with 20,000 or more inhabitants. A
41 rural place was defined as an area that was not urban.
42 For example, places under 20,000. Another example. for
43 certain housing programs rural means any open country or
44 any place, town, village or city, which is not part of or
45 associated with an urban area and which, No. 1, has a
46 population not in excess of 2,500 inhabitants, or, No.
47 2., has a population between 2,500 to 10,000 if it's
48 rural in character, or, No. 3., has a population between
49 10,000 and 20,000 and is not contained within a standard
50 metropolitan statistical area and has a serious lack of

1 mortgage credit for lower or moderate income families.
2 The Wolf and Fisher report examined the use of population
3 thresholds and determined that they did not perform well
4 in separating rural and nonrural groups. The two primary
5 factors separating communities into rural and nonrural
6 groups are, instead, No. 1., country food production for
7 local consumption also referred to as wild food
8 production, and No. 2., sparsely populated open country
9 in the local area measured by population density. These
10 factors are central to the most common meanings of rural
11 and each have measures generally available in demographic
12 and other scientific data bases. For that reason, the
13 Federal Subsistence Board should abandon its use of
14 thresholds and adopt the discriminate analysis using
15 weighted population densities and per capita harvest of
16 wild food, like the one developed by Wolf and Fisher as
17 one step in making its rural/nonrural determinations.

18

19 Co-resident communities.

20

21 The Wolf and Fisher report found that
22 there could be co-resident communities, populations that
23 exist in rural/nonrural fringe areas of Alaska. Co-
24 resident communities are defined as distinguishable
25 communities or populations that reside in the same
26 geographic area, but which have distinctly different land
27 use patterns. For example, they use the surrounding
28 public lands and waters in substantially different ways.
29 Examples of co-resident communities include the Amish and
30 Old Order Mennonites who are distinctively rural despite
31 their proximity to their greater Pennsylvania population.
32 No one would suggest that these distinct populations are
33 socially, politically or communally integrated. The Wolf
34 and Fisher report offered a non-arbitrary and fair method
35 of assessing core resident groups in rural/nonrural
36 fringe areas of Alaska. Examples of such communities
37 include Ketchikan/Saxman, the Sitka Tribe in the Sitka
38 Borough, and the Kenatize Tribe in the Greater Kenai and
39 Soldotna community. For a full explanation of core
40 resident communities and how they should be evaluated,
41 see Pages 56-59 of the Wolf report.

42

43 Tribes should be recognized as
44 communities, populations for rural/nonrural
45 determinations in the Federal process.

46

47 Census designated areas also should be
48 recognized as communities, populations as well as
49 municipalities and any geographically bounded population
50 with information on this land uses.

1 Hunting clubs or other similar kinds of
2 voluntary associations, like the Boy Scouts, should not
3 be recognized as communities, populations for a
4 rural/nonrural determination. If the Board continues to
5 rely on population thresholds in its analysis of
6 rural/nonrural communities, it should raise the upper
7 threshold to 11,000. The legislative history of Title
8 VIII of ANILCA identifies four, and only four cities in
9 Alaska; Anchorage, Fairbanks, Juneau and Ketchikan,
10 Senate Report No. 96-413. The smallest, when ANILCA was
11 passed was Ketchikan. At the time the city of Ketchikan
12 had a population of approximately 7,000 whereas the
13 greater Ketchikan area had a population of approximately
14 11,000. The area population should be taken to represent
15 congressional intent. In fact, the Federal Subsistence
16 Board on November 24, 2008 recommended to the Secretary
17 that he initiate a proposed rule to change the
18 presumptive nonrural population threshold from 7,000 to
19 11,000. We support the Federal Subsistence Board's 2008
20 recommendation.

21

22 Aggregation of communities.

23

24 A major problem with the current Federal
25 rural/nonrural determination process is that initial
26 aggregation step based on arbitrary integration factors
27 that are unrelated to rural or nonrural status. Such as,
28 public school location or commuting percentages. This
29 initial aggregation step arbitrarily biases in favor of
30 large populations over small populations. This is an
31 unnecessary step and isn't needed as part of the
32 determination process. Communities, populations should
33 be assessed and classified on their own individual
34 merits, aggregation can then occur after the
35 determination. Such a procedure was successfully used in
36 the Wolf and Fisher report. This would solve the problem
37 of having to define what integration means in the current
38 Federal process. It eliminates the bias. Communities
39 like Saxman, for example, would have a chance to receive
40 an unbiased assessment based on their own characteristics
41 rather than being annexed by a neighbor that is
42 geographically close, larger, but different in terms of
43 nonrural factors.

44

45 High school attendance is a poor
46 indicator of whether a community is socially, politically
47 or economically separate from its neighbors. The process
48 of a local high school depends on contingencies such as
49 the size and income of a community. Before the 1970s
50 most small rural Alaska villages lacked high schools.

1 They were required to send high school students outside
2 their local communities, a situation legally challenged
3 and changed following the Molly Hootch Decision. The
4 fact that a small community sent some of their students
5 to a nearby school indicates only that the small
6 community is not rich enough to have a separate high
7 school for its students, it doesn't mean that it's normal
8 in character.

9
10 Commuting patterns for wage employment
11 may be used sometimes as an indicator of the boundaries
12 of urban areas, but that would only be one factor of many
13 that can be used to determine whether a community is
14 distinct from another.

15
16 More common indicators of a community's
17 distinctiveness are municipal boundaries, the presence of
18 separate governments, distinctive local histories and
19 distinctive social-economic systems. As the Wolf and
20 Fisher report notes, wage employment by itself as never
21 been found to be a good indicator of a population's urban
22 or rural status as most of the employed rural population
23 in the United States is engaged in wage employment,
24 rather than in farming or other forms of food production.
25 In fact, rural people often migrate out of a community
26 for the use of employment outside of a small community
27 ignores the array of published literature for almost 50
28 years regarding dual economies in Alaska. In fact the
29 quintessential subsistence hunter/fisher in Alaska
30 usually is a seasonal labor who migrates out of the
31 community for work, that doesn't make the community
32 nonrural. Proximity and road accessibility are not
33 reliable indicators of rural status. The presence or
34 absence of a road does little from a social science
35 perspective to establish grouping with another community,
36 it merely proves that there is a road. The fact that a
37 segment of the urban population travels to rural areas
38 for certain pursuits does not automatically make the
39 urban and rural populations a single community any more
40 than the converse. Many small communities in Alaska are
41 geographically near communities with large populations.
42 These communities should be assessed based on their rural
43 or urban characteristics and not categorized as urban
44 just because they are connected to an urban area.

45
46 Saxman lost its rural status only through
47 an arbitrary administrative step applied by the Federal
48 Subsistence Board. The Board used high school attendance
49 and commuting information as a preliminary step to erase
50 Saxman's status as a distinct community. That step

1 caused Saxman to disappear administratively becoming
2 arbitrarily absorbed by Ketchikan. In reality, Saxman
3 still exists as a socially, politically, and economically
4 distinct community, one that is dependent upon fishing
5 and hunting as part of its traditional mix subsistence
6 cash economy.

7

8 That's all I have.

9

10 I'd like to thank you for the opportunity
11 to provide oral testimony.

12

13 Tomorrow I'll attend the meeting in the
14 morning and give copies of this to the RAC for their
15 consideration as well.

16

17 Thank you.

18

19 HEARING OFFICER LORRIGAN: Thank you, Mr.
20 Peterson.

21

22 Is there anybody else in the room or on
23 line that would like to speak to this issue.

24

25 (No comments)

26

27 HEARING OFFICER LORRIGAN: Seeing and
28 hearing none, I want to reemphasize that the comment
29 deadline is November 1st of this year.

30

31 I'd like to thank everybody for coming
32 tonight. It doesn't appear we're going to get many more
33 people.

34

35 The Federal Subsistence Board is looking
36 forward to the comments on this issue from the tribes,
37 the ANCSA Corporations and the general public. After all
38 comments are received and evaluated then the process
39 moves into Phase II, where the Board may craft
40 recommendations on the rural determination criteria to
41 forward to the Secretaries of the Interior and
42 Agriculture.

43

44 Thank you all for coming tonight.

45

46 REPORTER: Do you want me to go off the
47 record, are you closing the hearing?

48

49 MR. SHARP: Okay, thanks, Jack, you have
50 a good night.

1 HEARING OFFICER LORRIGAN: Thanks, Dan.
2
3 REPORTER: Yes?
4
5 HEARING OFFICER LORRIGAN: Yes. The time
6 is 7:46.
7
8 (Off record)
9
10 (END OF PROCEEDINGS)

