



**City of Dillingham
Responsive Brief On
Petition to Annex THE WEARY/SNAKE RIVER TRACT, THE SNAKE RIVER
SECTION AND IGUSHIK SECTION OF THE NUSHAGAK COMMERCIAL
SALMON DISTRICT, AND THE IGUSHIK VILLAGE TRACT, CONSISTING OF
118 SQUARE MILES OF WATER AND 37 SQUARE MILES OF LAND,
Using Legislative Review Method**

February 26, 2016

BOYD, CHANDLER & FALCONER, LLP

By: 

Brooks W. Chandler
Attorney for City of Dillingham

AS 29.35.260(c) makes planning power optional for second class cities such as Manokotak. The city's current ordinances¹⁶ do not provide for any planning and zoning authority within existing city boundaries. If the city has not exercised planning and zoning powers within existing boundaries a claim that annexation is necessary to provide for planning powers on any of the land within Tracts A, B and C is not logical. Igushik is a seasonal community which as documented by Manokotak's petition has been in existence for decades. The municipality of Manokotak has been in existence for decades without exercising planning and zoning authority. There is no indication of a historical need for the exercise of such power either within Manokotak or within the territory it proposes to annex. Given this history the assertion that annexation is necessary to prevent haphazard development is a stretch too far. The need for city government at Igushik Beach has not been demonstrated.

WITHIN TRACT B DILLINGHAM HAS THE ABILITY TO PROVIDE ESSENTIAL SERVICES MORE EFFICIENTLY AND EFFECTIVELY THAN MANOKOTAK

In its December 2011 decision approving Dillingham's annexation petition the LBC found "no other existing municipality has the ability to provide essential municipal services to the territory to be annexed more efficiently and more effectively" than Dillingham¹⁷. The territory to be annexed included Tract B. This finding was based in part on the absence of an expressions from Manokotak that Manokotak residents wanted or were capable of providing essential municipal services within Tract B. This is not surprising. The focus of Manokotak's petition is on provision of services in Tract C the upland area adjacent to Igushik Beach. But Dillingham's long history of providing support services to the Nushagak District permit holders through existing port and harbor facilities, a landfill, roads and public utilities all of which are needed to provide a way to harvest fish, process fish and transport fish to market argues in favor of an LBC determination that Dillingham is more efficiently and effectively able to provide services within Tract B. That Manokotak has filed an annexation petition does not change the nature and value of the services actually provided by Dillingham in Tract B. A hope to provide services in the future does not diminish Dillingham's history of providing services for decades. Dillingham remains the most effective and efficient municipality to provide services to permit holders fishing in the Igushik Section of the Nushagak District.

MANOKOTAK'S PROPOSED FISH TAX CANNOT BE FEASIBLY IMPLEMENTED.

3 AAC 110.110[4] requires the LBC to consider the feasibility and plausibility of Manokotak's proposed operating and capital budgets. Both capital and operating budgets submitted with the Manokotak petition are premised on collection of a 2% raw fish tax on fish harvested within the proposed expanded Manokotak boundary¹⁸. Whether the fish tax is feasible to implement is integral to Manokotak's plan to extend services to Igushik Beach.

¹⁶ Exhibit G (excerpt from Manokotak code).

¹⁷ Dec. 12, 2011 Decision p. 6.

¹⁸ Manokotak Petition p. 65.

Manokotak has not provided a specific proposed fish tax with its petition¹⁹. Such taxes typically take two forms; 1) a version of a sales tax in which the tax is imposed on the seller of raw fish and collected by the buyer at the point of delivery²⁰; and 2) a severance tax also based on the value of fish levied based on where fish were caught and also collected by the buyer at the point of delivery²¹. Neither version is feasible to implement within proposed Tract B. Understanding why requires an understanding of how fish caught within Bristol Bay by the drift fleet are sold, delivered, and identified.

The Bristol Bay fishery is managed by the Alaska Department of Fish and Game (ADF&G) in accordance with a published management plan. For management purposes, Bristol Bay is divided into 5 Districts²². A commercial drift permit is issued for the entire Bristol Bay fishery. A Bristol Bay limited entry drift permit can be fished in any one of the 5 commercial fishing districts – Togiak, Nushagak, Naknek-Kvichak, Egegik, Ugashik. A permit holder may fish in the Nushagak District or may fish on the eastern side of Bristol Bay in the Egegik District²³. This election is made before starting to fish and may be changed with 48 hour notice.

The Nushagak District drift net commercial fishery is divided into three sections - the Nushagak (or “all other”), Snake River (closed), and Igushik²⁴. Within the Nushagak District a drift permit holder may fish in either the Igushik Section or the Nushagak Section without making any formal declaration and can move between sections without advance notice. ADF&G may open the entire Nushagak District or to ensure escapement in the Igushik Section is met, will very occasionally only open the Nushagak Section²⁵.

¹⁹ Manokotak’s Transition Plan does not provide a schedule for adoption of such a tax or implementation of collection. Should the LBC approve Manokotak’s petition such approval should be conditioned on actual adoption and implementation of a fish tax. [3 AAC 110.570(c)(1) [authority to impose conditions on annexation].

²⁰ See, for example SPCO 6.10.110(b)(City of Sand Point sales tax); UCO Chapter 6.44 (City of Unalaska raw fish tax).

²¹ Chapter 60.40 (Aleutians East Borough severance tax). These local ordinances are attached as Exhibit H.

²² See, http://www.adfg.alaska.gov/index.cfm?adfg=CommercialByFisherySalmon.salmonmaps_districts_bristolbay

²³ 5 AAC 06.370(a) and (b)(notice of election of district required, change in district permitted with advance notice).

²⁴ 5 AAC 06.200.

²⁵ Exh. I, (ADF&G Nov. 25, 2015 letter).

ADF&G has designated six set net areas and the two drift fishery sections as statistical areas²⁶. Manokotak seeks to annex both the Igushik Beach set net statistical area (325-11) and the Igushik Section drift fishery statistical area (325-10).

Bristol Bay fish deliveries are made on the water to tenders and recorded using either paper or electronic fish tickets²⁷. The Bristol Bay drift fleet reports all salmon caught in Bristol Bay by “District Caught” not by statistical area²⁸. When the entire Nushagak District is open salmon harvested are reported as “Nushagak District” fish using the 325-00 designation. According to ADF&G “it is not possible to separate harvest by section” when both the Igushik Section and the Nushagak Section are open²⁹. Permit holders and fish buyers are not required to estimate or separately identify in which section a particular fish was harvested.

This means Manokotak’s planned fish tax is not capable of being implemented and enforced under the current ADF&G reporting system. This greatly complicates Manokotak’s plan to collect fish tax levied on fish harvested in the Igushik Section. In fact, Manokotak told ADF&G the current reporting system “may frustrate the ability of Manokotak to determine which fish harvests are subject to the 2% raw fish tax Manokotak proposes in its annexation petition . . . Unless ADF&G’s fish tickets specifically identify salmon as being harvested from the Igushik Section, it may not be feasible to have the fish buyers collect and remit the tax payments”³⁰.

3 AAC 110.110[4] requires the LBC to assess the “feasibility” of Manokotak’s anticipated capital and operating budgets. Those budgets are premised on an assumption of collecting raw fish tax on fish harvested from the Igushik section that, by Manokotak’s own admission is of doubtful feasibility. It is not in the best interests of the State of Alaska to encourage the expansion of municipal boundaries based on taxation schemes that are not feasible to implement. This is not simply a matter of two municipalities taxing the same delivery of the same fish at different rates. Rather, tax collection would be destined to be based on estimates not capable of verification or audit. These are standard features of a sales tax critical to its feasibility. Manokotak’s taxation plan is simply not capable of implementation given the current fish ticket reporting system used by the State of Alaska. The LBC should avoid approving a

²⁶ Exh. J (ADF&G Nushagak Commercial Salmon Statistical Area Maps. The set net statistical areas are Ekuk, Clarks, Queens, Nushagak/Combine, Coffee Pt. and Igushik.)

²⁷ Exh. K (Series B Bristol Bay Salmon Fish Ticket).

²⁸ Id. (area highlighted).

²⁹ Exh. I (ADF&G Nov. 25, 2015 letter to James Brennan).

³⁰ Exh. L (James Brennan to ADF&G Commissioner Nov. 10, 2015).



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of
Fish and Game**

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November 25, 2015

James T. Brennan
Law Offices of Brennan and Heideman
619 E. Ship Creek Ave #310
Anchorage, AK 99501

Dear Mr. Brennan:

Commissioner Cotten asked me to respond on his behalf to your recent letter on fish ticket reporting in Nushagak Bay. I understand why your client is interested in more detailed reporting as it could bolster tax revenues for the City of Manokotak if the annexation request is successful.

On October 20, 2015, Assistant Attorney General Seth Beausang with the Department of Law provided you with the following guidance:

The Nushagak District drift gillnet fishing area may be opened by individual section (the Nushagak section (325-30) or Igushik section (325-10)), or as a whole (the Nushagak and Igushik sections together (325-00)). The regulation at 5 AAC 39.130(c)(7) refers to statistical area, district, and subdistricts. The Nushagak District does not have any subdistricts. When the entire district is open harvests are reported as 325-00 and that is all the regulation and department require. There is no requirement to list the section where fish are harvested when the entire district is open (reporting is different when only one section is open). Furthermore it is not possible to separate harvest by section when both are open.

Mr. Beausang reviewed your November 10, 2015 memorandum and has not changed his position that our reporting practices in Nushagak Bay are consistent with Alaska's statutes and regulations. He did, however, ask me to respond to your assertion that our use of statistical areas for purposes of fish ticket reporting conflicts with the definition of the "Igushik Statistical Area" in 5 AAC 06.370(f). Mr. Beausang pointed out that this regulation defines statistical areas in the Nushagak District "[f]or purposes of this section" only, and the regulation pertains to registration and not reporting. I would also like to add there are other areas of the state (e.g., Upper Cook Inlet) where reporting on fish tickets is handled in a similar manner.

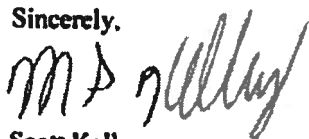
As there are several reasons why your request is impractical for the department and fishermen, I am unable to accommodate your request. If you have any further questions on this issue, please contact Mr. Beausang directly.

James T. Brennan

- 2 -

November 25, 2015

Sincerely,



Scott Kelley
Director

Cc: Sam Cotten, Commissioner
Seth Beausang, Department of Law

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LOCAL BOUNDARY COMMISSION

DECISIONAL MEETING

December 1, 2016
9:07 a.m.

Taken at:
Anchorage, Alaska

Commissioners Attending:
Lynn Chrystal, Chairman
John Harrington (via telephone)
Bob Harcharek (via telephone)
Lavell Wilson
Darroll Hargraves
Staff Attending:
Eileen Collins
Brent Williams

1 teleconference.

2 MS. MACSALKA: You -- Chair
3 Chrystal, you can ask everybody to go on mute
4 maybe, except the two Commissioners. That helps
5 (inaudible).

6 CHAIR CHRYSAL: Yeah. I did that
7 several times yesterday. It helped.

8 MS. COLLINS: Yesterday.

9 MS. MACSALKA: Oh, I'm sorry.

10 CHAIR CHRYSAL: We've actually had
11 to disconnect and start over a couple times.

12 MS. COLLINS: I guess we could
13 remind people.

14 CHAIR CHRYSAL: Okay. Anyway.
15 I'm sorry to interrupt you, Commissioner Wilson,
16 you were starting to --

17 COMMISSIONER WILSON: Is that
18 appropriate now to --

19 CHAIR CHRYSAL: Yeah.

20 COMMISSIONER WILSON: My thought
21 on -- rather than excluding all of Tract B, would
22 be to give from the mouth of the Weary River a
23 3-mile-wide corridor all the way down to the
24 bottom of Tract B following the coastline. That
25 would protect their setnet fishery 3 miles out and

1 about it. But in this petition as well as in
2 another petition we're going to look at, there's
3 nothing out there but fish. Fish don't vote and
4 fish don't particularly need any services from
5 those municipalities. So I -- in my estimation,
6 that standard is not met.

7 CHAIR CHRYSTAL: Okay. I totally
8 disagree. I think there are residents out there,
9 but they're not out there full time.

10 COMMISSIONER HARGRAVES: No.

11 CHAIR CHRYSTAL: They're out there
12 part of the year, but they're still residents.
13 They still use that property and that land for
14 probably, what? Four months. So I do feel those
15 are residents and this would help, say, the people
16 that live there. That's the people that are there
17 part time.

18 We heard so much testimony about how
19 Manokotak just basically pulls up stakes and moves
20 out there during the fishing season. So I'm not
21 sure how you could not consider them residents.

22 COMMISSIONER HARGRAVES:

23 Mr. Chairman?

24 CHAIR CHRYSTAL: Yes.

25 COMMISSIONER HARGRAVES:

1 municipal services on an efficient, cost-effective
2 level? The Commission may consider relevant
3 factors; including, land use and ownership
4 patterns, population density, existing and
5 reasonably anticipated transportation patterns and
6 facilities, natural geographic features and
7 environmental factors, and extraterritorial powers
8 of cities.

9 I presume we'll have a little disagreement
10 here on the boundaries. I know Commissioner
11 Harrington would disagree with having so much
12 water.

13 COMMISSIONER HARRINGTON:

14 Absolutely.

15 CHAIR CHRYSTAL: What you got
16 against water?

17 COMMISSIONER HARRINGTON: I don't.
18 And if I make it clear, I would seriously consider
19 having the boundaries of such a city include the
20 natural setnet area -- for that area to be
21 included. It's just that massive inclusion of the
22 bay that I have problems with.

23 CHAIR CHRYSTAL: Okay. Fair
24 enough.

25 COMMISSIONER HARCHAREK:

1 a little bit, and we missed that last -- at least
2 I missed part of that last couple minutes.

3 COMMISSIONER HARRINGTON: Can you
4 hear me fine?

5 CHAIR CHRYSTAL: Yeah. Right there
6 is perfect.

7 COMMISSIONER HARCHAREK: That's
8 better. Much better.

9 COMMISSIONER HARRINGTON: Okay. I
10 will stay standing still. Now, where was I?

11 CHAIR CHRYSTAL: We were talking
12 boundaries and water.

13 COMMISSIONER HARRINGTON: The
14 noncontiguous nature of the Manokotak city --
15 current city and the Section C and the water in
16 front of Section C is not contiguous to the city
17 limits of Manokotak. That's my only dilemma.

18 And yet if we have the option of waiving
19 that -- because I think we have a clear indication
20 of the historical ties and community ties between
21 the two. That's, to me, the only real problem I
22 see adding Section C and the waters above Section
23 C to the City of Manokotak is that noncontiguous
24 section.

25 CHAIR CHRYSTAL: Well, I would

1 counter that by saying that it is contiguous, if
2 you use part of Tract B.

3 COMMISSIONER HARCHAREK: Correct.

4 CHAIR CHRYSAL: Anyway. Okay.

5 Anybody have any more comments on that?

6 COMMISSIONER HARGRAVES:

7 Mr. Chairman?

8 CHAIR CHRYSAL: Yes, sir.

9 COMMISSIONER HARGRAVES:

10 Commissioner Hargraves. I question the population
11 density. I question anticipated transportation
12 patterns and facilities. That corridor, if it had
13 a road scheduled through it, if there was some
14 kind of need for that, I could understand it. I
15 do have questions on those.

16 As far as the water is concerned, this
17 annexation, a lot of the information that was
18 provided to us, makes it clear that what we're
19 after is fish. Now, whether you take a 200-foot
20 strip along that beach or whether you take the
21 whole area is immaterial to me.

22 The petition, as they put it in, to my mind,
23 doesn't need any amendments. I just question the
24 overall petition, but have no interest in
25 modifying or amending this petition request.

1 continually on down to the very bottom of Tract B,
2 you'd basically half Tract B and would still leave
3 all that contiguous area. I think that would be a
4 very good solution.

5 CHAIR CHRYSTAL: I think you're
6 absolutely correct, Commissioner Wilson.

7 COMMISSIONER HARGRAVES:
8 Mr. Chairman?

9 CHAIR CHRYSTAL: Yes, sir.

10 COMMISSIONER HARGRAVES:
11 Commissioner Hargraves. What would be the purpose
12 of reducing that water portion? What's the
13 purpose of that?

14 COMMISSIONER WILSON: Of reducing
15 it?

16 COMMISSIONER HARGRAVES: Yeah.

17 COMMISSIONER WILSON: Well, need,
18 for one thing. Their basic need is along the
19 shore, not way out in the bay. They testified
20 there's not many drift fisherman even drift in
21 that area. It's -- their main concern was the
22 setnetters and the need for a corridor. And we
23 get into that contiguous thing. That would keep
24 it contiguous.

25 CHAIR CHRYSTAL: I could accept all

1 with second-class cities in recent years.

2 I don't know how to get guidance on it, but I
3 cannot believe that people at the constitutional
4 convention foresaw a second-class city of this
5 configuration and size. Thank you.

6 CHAIR CHRYSAL: Okay. Any other
7 comments?

8 COMMISSIONER WILSON: I'd just like
9 to point out that, you know, you're talking about
10 the size of the cities, Wasilla and Palmer.
11 They're not annexing -- they don't cover large
12 expanses of water. You know, it's strictly land.

13 And now we've gotten into this thing where
14 cities are annexing water and have been for some
15 time, which greatly increases the amount of square
16 miles that city has. But it doesn't really --
17 we're talking apples and oranges is what I'm
18 saying.

19 CHAIR CHRYSAL: Right. Any
20 comments on that? We still --

21 COMMISSIONER HARRINGTON: Well,
22 Commissioner Wilson --

23 CHAIR CHRYSAL: Do we still assume
24 that we're in the best interest of the State here
25 on this one?

1 CHAIR CHRYSTAL: No. He was
2 talking about --

3 COMMISSIONER HARRINGTON:
4 Hargraves. He said it was not in the best
5 interest of the State. I heard that part, but I
6 did not hear what he was referring to.

7 CHAIR CHRYSTAL: Well, we were
8 discussing item 7. At the very end it says, And
9 is in the best interest of the State.

10 COMMISSIONER HARRINGTON: And is he
11 referring to the entire annexation proposal?

12 COMMISSIONER HARGRAVES: Correct.

13 CHAIR CHRYSTAL: Excuse me. You're
14 saying that you're -- the entire proposal is not
15 in the best interest of the State?

16 COMMISSIONER HARGRAVES: Yes.

17 CHAIR CHRYSTAL: Because I thought
18 earlier you were saying that you accepted the
19 petition?

20 COMMISSIONER HARGRAVES: I said I
21 wouldn't vote to amend it to cut the water. But
22 I'm saying that that proposal, I don't see how it
23 benefits the State one iota. The State will
24 continue to do everything that they have done in
25 the past out there, provide education, what have

1 call vote.

2 MS. COLLINS: Chair Chrystal?

3 CHAIR CHRYSTAL: Yes.

4 MS. COLLINS: Commissioner Wilson?

5 COMMISSIONER WILSON: Uh...

6 MS. COLLINS: I can come back to

7 you.

8 COMMISSIONER WILSON: Come back to

9 me.

10 MS. COLLINS: Commissioner

11 Hargraves?

12 COMMISSIONER HARGRAVES: Yes.

13 MS. COLLINS: Commissioner

14 Harrington?

15 COMMISSIONER HARRINGTON: No.

16 MS. COLLINS: Commissioner

17 Harcharek?

18 COMMISSIONER HARCHAREK: Yes.

19 MS. COLLINS: Commissioner Wilson?

20 COMMISSIONER WILSON: I'm going to

21 vote no. I'm in favor of the petition, but not to

22 include all of Tract B. So I'll vote no.

23 CHAIR CHRYSTAL: Okay. We have a

24 vote of three to two.

25 MS. COLLINS: The record will

1 Mr. Chairman?

2 CHAIR CRYSTAL: Yes, sir.

3 COMMISSIONER HARGRAVES: Since I
4 took a no position with Manokotak, perhaps it's
5 okay for me to insert no here. There is no need
6 for government on those fish.

7 CHAIR CRYSTAL: Okay. Anybody
8 else? Commissioner Wilson? Okay. We have mostly
9 noes on that one.

10 Under boundaries, 3 AAC 110.130(c)(2). To
11 promote the limitation of community, the proposed
12 expanded boundaries of the city may not include
13 entire geographical regions or large, unpopulated
14 areas. Do they include entire geographic regions
15 or large, unpopulated areas?

16 COMMISSIONER WILSON: Yes.

17 COMMISSIONER HARRINGTON: Yes.

18 COMMISSIONER HARCHAREK: Yes.

19 COMMISSIONER HARGRAVES: Yes.

20 CHAIR CRYSTAL: Okay. We have a
21 whole bunch of yeses. Okay. If yes, are those
22 proposed boundaries justified by the application
23 of standards in 3 AAC 110.090, 3 AAC 110.135, and
24 are otherwise suitable for city government?

25 COMMISSIONER HARRINGTON: Yes.

1 CHAIR CHRYSTAL: Okay. Anybody
2 else?

3 COMMISSIONER WILSON: I say yes,
4 Wilson.

5 CHAIR CHRYSTAL: Okay. I believe
6 yes as well.

7 Okay. Boundaries, 3 AAC 110.130(d). Does
8 the petition for annexation to the city describe
9 boundaries overlapping the boundaries of an
10 existing organized borough?

11 COMMISSIONER WILSON: No.

12 CHAIR CHRYSTAL: Okay.

13 COMMISSIONER HARCHAREK: No.

14 COMMISSIONER HARRINGTON: Yes.

15 CHAIR CHRYSTAL: We can skip to the
16 next question. If yes, does -- no. Wait. We
17 didn't do that.

18 MS. COLLINS: Bottom one.

19 CHAIR CHRYSTAL: Yeah. Does the
20 petition for annexation to the city describe
21 boundaries overlapping the boundaries of another
22 existing city?

23 COMMISSIONER WILSON: Yes, it does
24 now.

25 CHAIR CHRYSTAL: I was just going

1 CHAIR CHRYSTAL: Oh, you're saying
2 yes. Okay. I guess maybe I have a question for
3 our attorney. You know, the answer to this
4 question would be yes if there's a borough getting
5 ready to form or is already in the process. But
6 it may be years and years and years before that
7 happens.

8 So do we answer the question in today's world
9 or the future? I think, today's world. If we
10 start voting on things that may happen 10, 20, 30,
11 40 years from now, we'll be in trouble.

12 COMMISSIONER HARRINGTON: My
13 apologies, Chair.

14 CHAIR CHRYSTAL: Yes.

15 COMMISSIONER HARRINGTON: Based on
16 the last one, I would have to say the standard is
17 met and the answer is no.

18 CHAIR CHRYSTAL: Okay.

19 COMMISSIONER HARGRAVES: Mr.
20 Chairman?

21 CHAIR CHRYSTAL: Yes, sir.

22 COMMISSIONER HARGRAVES: I think
23 what this says is, can these municipal services be
24 provided more effectively and more -- more
25 effectively by the creation or modification of

1 some other political subdivision? And based on
2 that, I say yes.

3 It's clear to me that the creation of a
4 borough would take care of a lot of the problems
5 that we've had presented to us in here. It would
6 be the streamlined, most efficient and, in my
7 estimation, best interest of the State.

8 CHAIR CHRYSTAL: Okay. Anybody
9 else? I'm not going to bet on the future. I
10 mean, as far as --

11 COMMISSIONER WILSON: That's the
12 thing.

13 CHAIR CHRYSTAL: -- way out in the
14 future, yes, a borough would be better. But it's
15 not something we're discussing today, I don't
16 think.

17 COMMISSIONER WILSON: Yeah.

18 COMMISSIONER HARGRAVES: But the
19 question is; can it be?

20 CHAIR CHRYSTAL: Yeah, I know. But
21 can it be -- it can't -- as far as I'm concerned,
22 it can't be right now because we don't have a
23 borough, and we don't have a plan for a borough.
24 So, therefore, we can't do it better. At least
25 that's the way my mind is going here.

1 MR. BALDWIN: Yes. I'll try. We
2 would like -- what our exhibits do -- Exhibit 30
3 describes the exclusions that we asked for from
4 the south boundary of Clark's Point City north to
5 Igushik Point.

6 And we asked -- except for the exclusion
7 around Clark's Point, what we asked for is waters
8 within statistical area 325-31 and 325-32, all
9 waters which are legal for setnetters to extend
10 their nets seaward from shoreline to the point
11 they can extend their nets seaward.

12 Then on -- and for your information, the --
13 and I'm referring to Commissioner Wilson -- the
14 areas that he expressed doubt about are the waters
15 in statistical area 325-31. That's from Queens
16 north to Igushik Point.

17 As to the next exhibit, what we're requesting
18 is all waters within the statistical areas going
19 south from the south border of the City of Clark's
20 Point down to Etolin Point (phonetic). And those
21 include the waters within statistical area 325-34
22 and Clark's Point, which is 325-33. So Queens and
23 Combine are in the north. Clark's and Ekuk are in
24 the south.

25 And, again, the area that you're concerned

1 MS. COLLINS: Four for and one
2 against.

3 CHAIR CHRYSTAL: Okay. The motion
4 passes. Now we're back to the original motion,
5 which is to approve the Dillingham petition as
6 amended.

7 MS. COLLINS: Correct.

8 CHAIR CHRYSTAL: And with the
9 stipulation that we put on the amendment that
10 staff and Mr. Baldwin will work together to get
11 those lines squared up in the metes and bounds.
12 So any further questions or comments about the
13 motion, the main motion?

14 Okay. Can we have a roll call, please?

15 MS. COLLINS: Chair Chrystal?

16 CHAIR CHRYSTAL: Yes.

17 MS. COLLINS: Commissioner Wilson?

18 COMMISSIONER WILSON: Yes.

19 MS. COLLINS: Commissioner

20 Hargraves?

21 COMMISSIONER HARGRAVES: Yes.

22 MS. COLLINS: Commissioner

23 Harcharek?

24 COMMISSIONER HARCHAREK: Yes.

25 MS. COLLINS: Commissioner

1 Harrington?

2 COMMISSIONER HARRINGTON: Yes.

3 MS. COLLINS: Five in favor.

4 CHAIR CHRYSTAL: Okay. Motion for
5 the City of Dillingham is approved, and we'll look
6 forward to those metes and bounds to be exact
7 before we have our final written statement. And
8 that will be somewhere -- we don't have that
9 scheduled yet, do we?

10 MS. COLLINS: No. But we could do
11 that in this meeting.

12 CHAIR CHRYSTAL: What? Schedule
13 the --

14 MS. COLLINS: The next one.

15 CHAIR CHRYSTAL: Well, we'd have to
16 make sure that we've got all the information
17 beforehand.

18 MS. COLLINS: Right. But we have a
19 very strict deadline. So either we --

20 CHAIR CHRYSTAL: Well, it's 30
21 days. Yeah.

22 MS. COLLINS: Christmas.

23 MS. MACSALKA: Yeah. I would
24 recommend going ahead and setting that. And you
25 can set it as close to the 30 days as you wish,

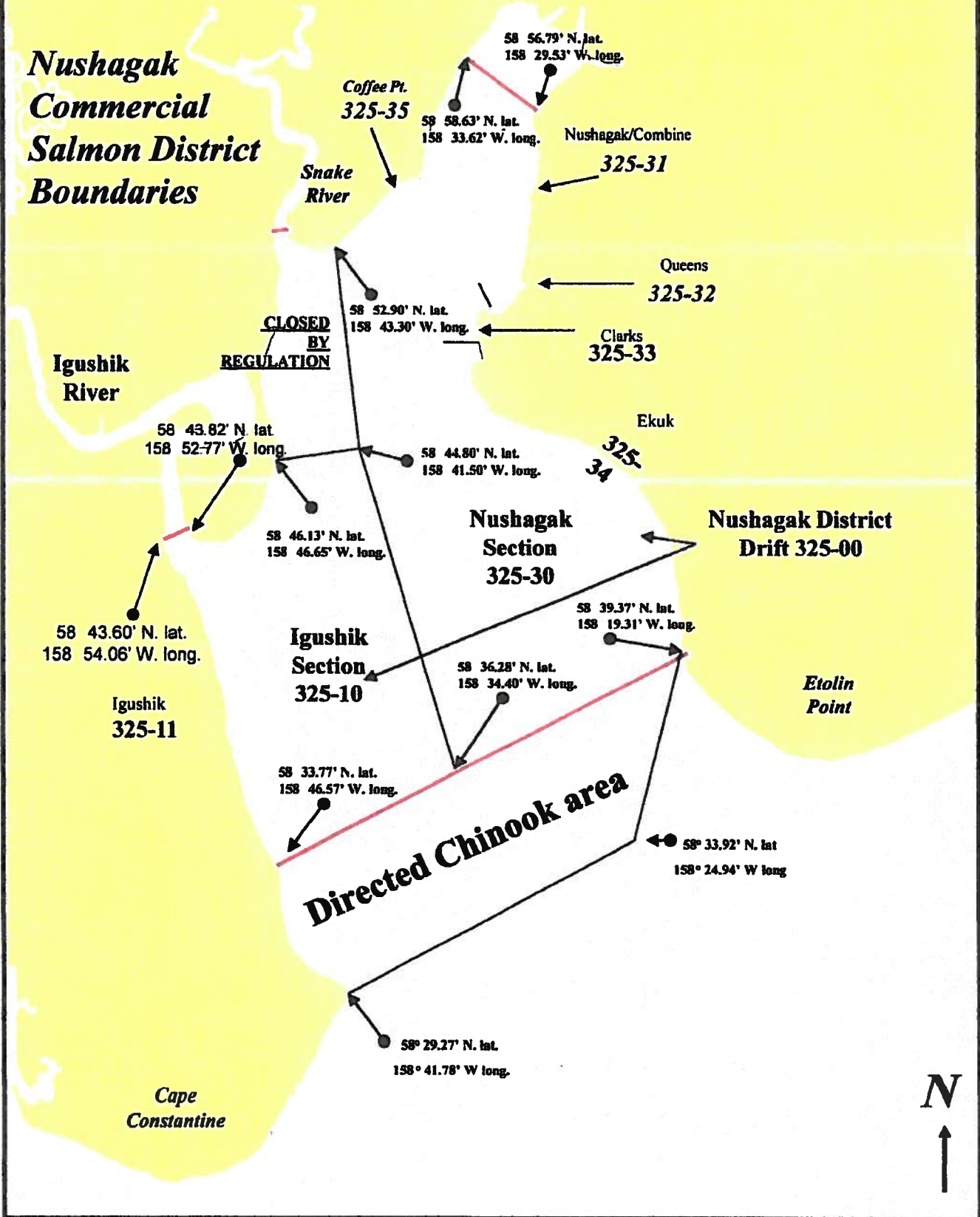
Alaska Department of Fish and Game

Division of Commercial Fisheries

(For Illustration Purposes Only)

BBSAL325.PPT. Revised 04 22 2011)

Nushagak Commercial Salmon District Boundaries



Local Boundary Commission - Public Hearing
November 30, 2016

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LOCAL BOUNDARY COMMISSION
PUBLIC HEARING

November 30, 2016
9:00 a.m.

Taken at:
Dillingham, Alaska

Commissioners Attending:

- Lynn Chrystal, Chairman
- Darroll Hargraves
- Lavell Wilson
- John Harrington (via telephone)
- Robert Harcharek (via telephone)

Staff Attending:

- Eileen Collins
- Brent Williams

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1 average local fish tax that fishermen are
2 paying elsewhere in Bristol Bay. This
3 analysis showed that it varies from fishermen
4 paying an average of \$570 in fish taxes in
5 the Togiak fishing district to Togiak for
6 their local fish tax, to the average
7 fisherman in Egegik who pay \$2,000 to a
8 combination of Egegik and Lake and Peninsula
9 Borough.

10 If the Dillingham annexation is
11 approved, Nushagak Bay fishermen would be
12 paying local fish taxes in the low to
13 mid-range compared to other Bristol Bay
14 fisheries.

15 The obvious next question is:
16 well, what if Nushagak fishermen have to pay
17 both the Dillingham and the future borough
18 local fish tax? Staff suggests on page 2 of
19 the final report that, quote, unquote:
20 Moreover, the Department believes granting
21 this annexation would cripple a future
22 borough's primary source of revenue
23 generation; therefore, this annexation is not
24 in the State's best interest, end quote.

25 This is simply not true. I was

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1 surprised that the staff report offered no
2 data or analysis to back this statement up,
3 and we've heard several in their testimony
4 comment about this burden and what the
5 implications are for being able to have a
6 future borough. Without this backup, this is
7 simply an opinion, though, and I'm going to
8 show that the data does not support this
9 opinion.

10 The State's 2015 Alaska taxable
11 shows that there are seven places in western
12 Alaska where both the city and the borough
13 levy a local fish tax, and combined rates
14 vary from 3-and-a-half percent to 5 percent.
15 Assuming a combined City of Dillingham and
16 future borough fish tax rate of 4 percent and
17 using the CFEC five-year averages for the
18 Nushagak fishing district, this would result
19 in an average tax burden of 1,830 per
20 fisherman at 4 percent. This would be on the
21 high end for Bristol Bay, but at 4 percent
22 it's still less than those fishing in the
23 Egegik District pay on average.

24 Keep in mind that this is before
25 any low income or dual taxpayer rebates are

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1 taken. Also, just to remember that these
2 local taxes are deductible on fishermen's
3 federal income tax returns.

4 I do want to note that my look at
5 the average tax burden on fishermen suggests
6 that the combined City of Dillingham and a
7 future borough local fish tax rate not exceed
8 4 percent or 4-and-a-half percent maximum.
9 The question becomes: If a 2 percent future
10 borough fish tax is reasonable, can this
11 raise enough revenue to run a future borough?
12 Again, the answer is yes.

13 As you've heard, there's a
14 regional government study going on now. This
15 month the McDowell Group issued one product
16 from that work for the regional tax portion.
17 That's the Dillingham Census Area Borough
18 Feasibility Study. The McDowell Group
19 report -- and also we've heard testimony, I
20 think, from Mr. Anderson yesterday about this
21 dollar amount. The McDowell Group report
22 estimates how much a variety of different
23 taxes in the region could generate and they
24 developed three different future Dillingham
25 census area borough budgets. The total

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1 borough revenue that they show can be
2 generated varies from 2-and-a-half to
3 \$3 million in these scenarios. I believe
4 Mr. Anderson yesterday talked about 2.7
5 million.

6 This could be generated by a
7 combination of 2 to 3 percent fish tax and
8 alcohol sales and lodging taxes and also
9 state community assistance revenue. Each
10 budget provides the three mandatory borough
11 services and has a small surplus.

12 In conclusion, I hope that my
13 comments show a path for you to find that it
14 is in the State's best interest to allow the
15 Dillingham annexation and that this will not,
16 quote, cripple a future borough, end quote.
17 My testimony, which used CFEC, DCRA, and
18 Department of Revenue data that's in the
19 record, as well as information from that
20 November McDowell Group report for the
21 regional borough study group shows that, one,
22 the level of harvest by regional fishermen in
23 the Nushagak Bay is quite similar to the
24 level of regional harvest in the Egegik,
25 Ugashik, Naknek/Kvichak, and Togiak

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1 Fish & Game during the commercial salmon
2 fishery. I was not prepared to speak off the
3 cuff, and so if you can bear with me, I
4 will --

5 CHAIR CHRYSAL: Now, that's not
6 the letter right there, is it? Yeah, please
7 get it out of the way.

8 MS. BRIDO: So what you're
9 looking at here in front of you is the Alaska
10 Department of Fish & Game's map of the
11 commercial salmon district boundaries. This
12 map is used by the Alaska Department of Fish
13 & Game during the commercial salmon fishery
14 to tell where salmon are caught and delivered
15 and provide openers during the commercial
16 salmon fishery.

17 The stat codes that are along the
18 sides, 32535, 32531, 32 -- there we go --
19 32333 and 34, as well as over here, 32511,
20 are the setnet stat codes. So those are used
21 for the setnet fissures who are fishing their
22 setnets off of the beach. When they deliver
23 their fish to the processor who's buying
24 their salmon, the processor registers those
25 fish as caught by a setnetter in these

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1 statistical areas. So if your setnet is
2 located here along the Ekuk beach, and you
3 deliver to Ekuk cannery, those fish are
4 recorded by the processor for the Alaska
5 Department of Fish & Game under the stat code
6 32534, et cetera, for the other setnet
7 districts. If you're going to move between
8 setnet districts, you have to wait 48 hours
9 and then move your setnet site, which doesn't
10 happen very frequently for setnetters.

11 When the drift fishermen
12 participate in the commercial fishing in the
13 Nushagak District, there are actually three
14 stat codes that they can fish under. When
15 the whole district is open from this red
16 line, this red line south to the south line
17 here, the whole stat code used is 32500. So
18 when the entire bay is open for drift salmon
19 fishing, and a drift fisherman takes their
20 fish to deliver to the processor, the fish
21 caught are registered on a fish ticket under
22 the stat code 32500. There's no way to tell
23 under that stat code where within the
24 district that drift fisherman has caught
25 those salmon. They could have caught some of

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1 them in the mouth of the Igushik River and
2 they could have caught some of them down at
3 the south line by Etolin Point. There's no
4 way to determine where that fisher has been
5 fishing as a drifter.

6 However, sometimes at the
7 Department's discretion they open parts of
8 the drift fishing district at one time. This
9 stat code here, 32510, is the Igushik
10 section, which is separated by this vertical
11 line. So anything west of that vertical line
12 when just that section is open, the
13 Department can tell that drift salmon are
14 caught in the Igushik section. At times they
15 open just the Nushagak section, which is this
16 stat code here, 32530. That's when this side
17 of the district is open independently.

18 The Department will decide to
19 open parts of the Nushagak District based on
20 escapement with the three main tributaries
21 within the bay. The Nushagak River, the Wood
22 River are on this east side of the bay, and
23 if their escapement is doing well, but the
24 Igushik River's escapement is not, the
25 Department will choose to close the Igushik

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1 section and allow just fishing to occur in
2 the Nushagak section. Alternatively, if the
3 Igushik River's escapement is doing well,
4 they'll choose just to open that section.

5 Most of the season the drift
6 fishing is prosecuted with the stat code
7 32500. So the entire drift district is open.
8 I believe the City's point in asking someone
9 to testify about these statistical codes
10 is -- and the Department has also put forth
11 the opinion that when the entire district is
12 open and they're using the statistical area
13 code 32500, there is no way to tell if the
14 drift fisherman is fishing in the Igushik
15 section and that tax base should go to the
16 City of Manokotak, or if that drift fisherman
17 has been fishing in the Nushagak section, and
18 that tax base should go to Dillingham should
19 the annexation proceed through.

20 So my testimony is just to show
21 the district is quite large, and when you're
22 using the stat codes, it's unrealistic to
23 apportion out how much of that raw fish tax
24 would go to the City of Manokotak and how
25 much would go to the City of Dillingham using

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1 32500 as a drift fisherman.

2 It is also unreasonable to have
3 both of those districts open at one time and
4 have them deliver based on where they're
5 fishing. So let's say both the Igushik
6 section and the Nushagak section are open
7 concurrently, and the Department says because
8 of annexation, if you've fished on the
9 Nushagak side, you must deliver your fish to
10 32530. If you fished on the Igushik side,
11 you must deliver to 32510, well, there's not
12 a whole heck of a lot of tenders that sit
13 over here in the Igushik section.

14 You may be fishing along the
15 south line and drifting and you're going to
16 deliver your fish just below the south line.
17 There's not really a way to say, okay, one of
18 my brailer bags was caught in 32510 and one
19 of my brailer bags was caught in 32530, so
20 let's split these fish between the sections
21 and give our raw fish tax to each area.

22 So it would just be something
23 that would be difficult for the Department to
24 do as far as tell when the whole district was
25 open where those drift fish were caught.

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1 So I hope that made sense. It
2 was much more eloquently put by Mr. Sands,
3 but hopefully I haven't given you a whole
4 soup of numbers there that are unusable.

5 CHAIR CHRYSTAL: I do have a
6 question. When you have a driftnetter and a
7 setnetter both fishing in the same area, can
8 the driftnetters come in and infringe on the
9 area of the setnetter?

10 MS. BRIDO: No, there are laws --
11 well, there's regulations under Alaska
12 statutes and through the Board of Fisheries
13 that have set up legal distances between gear
14 types. So you have to be a certain distance
15 away from a setnet operation if you're a
16 drifter and vice versa.

17 CHAIR CHRYSTAL: Okay. And you
18 can't claim, gee, I was lost in the fog and I
19 drifted in by mistake?

20 MS. BRIDO: Well, I think you
21 could try that with the troopers, but it
22 probably wouldn't work out for you.

23 CHAIR CHRYSTAL: Okay. Anybody
24 else got any questions?

25 COMMISSIONER HARGRAVES: Mr.

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1 So the Commission had this sort
2 of dilemma. How does that work to have a
3 borough that really wants some property that
4 happens to be owned by that area's regional
5 corporation to be included in a new borough?
6 So they did two things. Two separate
7 actions, two separate petitions.

8 One was it allowed a region to
9 vote for a borough and it was conditioned
10 about, that vote, in fact, that Red Dog
11 property that was in the North Slope Borough
12 would be detached and included with this new
13 petition. And in advance of the petition for
14 the legislative review at the same time, or
15 roughly the same time but a separate action
16 instead it said: We're going to detach part
17 of your property within the North Slope
18 Borough and it will be detached conditioned
19 upon people voting for a borough, okay.

20 So how does that relate to this?
21 It's been mentioned by staff and a number of
22 people that come up to testify that somehow
23 if you have an existing city, you would
24 prevent or discourage or financially make it
25 difficult for a future borough. Through

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1 MAYOR RUBY: So, Mr. Chairman, I
2 apologize. I did have one more item to
3 cover. You had asked or somebody had asked a
4 question yesterday about the size of our
5 geographic city after annexation. So I
6 wanted to respond to that.

7 So I used the DCCED community --
8 it's listed on the top of this -- Community
9 Information Database on the web and pulled up
10 random communities that I could think of to
11 use as comparisons. So what I would actually
12 direct your attention to is the population
13 per square mile. If you look at the -- some
14 of the comparables would probably be Egegik.
15 As you can see, the square miles of water
16 within their community, 101 square miles
17 based on their population of 109 people.
18 They've, you know, got .7 persons per square
19 mile.

20 Also, the communities of St. Paul
21 is probably a comparable, and St. George, and
22 interesting because they're side by side. So
23 St. Paul has a total square miles of 295; 255
24 of that is water. St. George, 147 square
25 miles of water, giving them under 1 person

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1 per square mile in their boundaries.

2 when I looked at the DCCED
3 website, too, they're still showing the data
4 for Dillingham from 2013. So the data you're
5 seeing here is what existed when our
6 annexation had gone through last time. So
7 showing the Dillingham boundaries as they
8 will be if you approve this annexation, which
9 is 397 square miles of water, it works out to
10 be about 5.4 persons per square mile within
11 our city.

12 CHAIR CHRYSTAL: I've got a
13 question.

14 MAYOR RUBY: Part of that's the
15 geography. I'm sorry?

16 CHAIR CHRYSTAL: Why did you pick
17 those particular cities? I know like -- why
18 wouldn't you pick Juneau? I know Juneau is a
19 huge geographic area. Of course it's a
20 bigger city, but the geographic area is huge.

21 MAYOR RUBY: Well, without
22 knowing population numbers, I mean, I did
23 this in like 30 minutes last night at about
24 11:30. So I didn't -- wasn't able to put a
25 lot of thought into picking communities.

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1 what I tried to do was pick coastal -- what I
2 thought would be like coastal communities,
3 small populations. Maybe some at least that
4 relied on fishing because obviously if it's a
5 coastal fishing community, at least in my
6 thinking, the boundary is going to be bigger
7 because fish is what matters and fish are not
8 on shore. So that's why I picked some of
9 these. You are right, I didn't include, I
10 don't think, any Southeast communities. I
11 probably should have.

12 CHAIR CHRYSAL: Well, or even in
13 the -- where Darroll and I live in the Mat-Su
14 valley Borough. You talk about huge. It's
15 over 100 miles from one end to the other.

16 MAYOR RUBY: I didn't include
17 that one either. This was just a
18 demonstration, and so I just wanted to answer
19 the question you had about --

20 CHAIR CHRYSAL: Well, you're
21 trying to compare oranges and oranges, I
22 guess.

23 MAYOR RUBY: Yeah. Well, oranges
24 and apples maybe.

25 COMMISSIONER HARGRAVES: Mr.