

HB

601



Citizens' Advisory Commission on Federal Areas

June 22, 1990

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Fairbanks, Alaska 99701
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Dear Legislator:

Since its creation in 1981, the Citizens' Advisory Commission on Federal Areas has been engaged in the task of determining the impacts of the Alaska National Interest Lands Conservation Act (ANILCA) on the people of our state and making recommendations to both state and federal agencies in order to minimize conflicts. One of the most important, and unfortunately most contentious, provisions of this federal statute has been Title VIII- Subsistence Management and Use. As you know, ANILCA Title VIII requires the state to provide for a subsistence preference for rural residents in order to retain fish and wildlife management authority on federal lands. The McDowell decision, which found that the state's subsistence law granting such a preference violated the Alaska Constitution, means that the state is no longer in compliance with the provisions of ANILCA Title VIII. Consequently, on July 1, 1990 the Secretary of the Interior and the Secretary of the Agriculture will invoke their authority under ANILCA and assume management of subsistence activities on the federal lands in Alaska.

Earlier this year, during the regular legislative session, our Commission transmitted to your office a proposal for an amendment to the Alaska Constitution. We are once again asking you to consider our proposed amendment during the upcoming special session of the legislature.

The Commission's decision to support a constitutional amendment was not one that was easily reached. Extensive debate and public testimony on this issue have led us to the conclusion that the State of Alaska must take immediate action to prevent the federal land managing agencies from assuming the management of subsistence activities on the federal lands in this state. At the time the Commission developed this proposal we felt that a constitutional amendment was the only mechanism available that would prevent a federal takeover and ensure the legislature's authority to enact a subsistence statute that would both comply with ANILCA and withstand future legal challenges.

We believe that our position favoring a constitutional amendment is further supported by the June 20, 1990 superior court decision severing the unconstitutional rural preference provisions from the remainder of the state's subsistence statute. Superior Court Judge Beverly Cutler, in that decision, stated: "(T)he supreme court's

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ruling in McDowell renders compliance with ANILCA an impossibility without a constitutional amendment." Barring extensive amendments to ANILCA or a successful challenge to ANILCA Title VIII in federal court, neither of which this Commission views as likely or desirable, a constitutional amendment appears to be the state's only reasonable alternative.

Enclosed is a copy of our proposed amendment and an analysis which concludes that the people of Alaska should be the final arbiters of the subsistence question. We ask your careful consideration of our proposal. If you have any questions or if we may clarify any points, please contact our staff offices.

Sincerely,

Lew M. Williams, Jr., Chairman
CITIZENS' ADVISORY COMMISSION
ON FEDERAL AREAS



By: Stan Leaphart
Executive Director



Citizens' Advisory Commission on Federal Areas

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PROPOSAL TO AMEND THE ALASKA CONSTITUTION

"Article VIII, Constitution of the State of Alaska, is amended by adding a new section to read:

Section 19. USE OF FISH AND WILDLIFE RESOURCES FOR SUBSISTENCE.
The Legislature may grant a preference in the use of fish and wildlife resources for subsistence based upon geographic, socioeconomic and cultural considerations."

ANALYSIS

Prior to the Alaska Supreme Court's decision in McDowell v. State of Alaska last December, it was widely presumed that the Alaska Legislature possessed the authority to grant a subsistence preference for rural residents in the use of Alaska's fish and game resources. The court's decision does not alter the fact that the people of Alaska, casting their votes on a 1982 state-wide ballot initiative proposing to repeal what was then Alaska's subsistence statute, overwhelmingly voted to retain the statute granting a subsistence preference in the use of Alaska's fish and game resources.

Implicit in the 1982 electoral decision is a clear public affirmation of the provisions of ANILCA Title VIII, including the term "rural". Additionally, the 1982 election affirmed the Legislature's authority to formulate a statute consistent with ANILCA. Despite the actions of the courts in McDowell and Madison, current public opinion polls demonstrate that if given the opportunity, the people of Alaska would again grant their consent to providing a preference to rural residents in the use of fish and game resources.

The constitutional amendment proposed by the Citizens' Advisory Commission on Federal Areas is intended to formally restore the Legislature's authority to grant a rural preference for subsistence. The proposed amendment does not directly grant the preference in and of itself but empowers the Legislature to do so, by statute, after considering what we have identified to be the essential relevant factors. Geographic, socioeconomic and cultural considerations are the essential relevant factors that must be weighed in defining what rural subsistence means in Alaska.

Recognizing geography as a relevant factor will allow Alaska law to say that people who live in a given location have their use of fish and game resources protected. "Rurality" cannot be defined without recognizing geography.

Recognizing socioeconomic conditions as a relevant factor allows Alaska law to say that granting a given community this protection has been done for a good public purpose based on the needs of the people who live there. It allows the Legislature to utilize socioeconomic data such as population size, employment, educational attainment, the availability of governmental services,

access to markets, etc. in assessing the "rurality" of a community. "Rurality" cannot be defined in geographic terms alone.

Recognizing cultural considerations as a relevant factor legitimizes the historical, customary, and traditional foundations of a community's use of fish and game resources for subsistence. "Rurality" cannot be defined in its Alaska subsistence context without recognizing the influence of culture on the landscape.

One important strength of this proposal is the relative simplicity of its language. This simplicity arises from the proposal's lack of specifics which are more appropriately addressed in a statute. A good constitution is a simple articulation of the principles by which a people purport to govern themselves. This proposal articulates the principle that the elected legislators of this state are endowed with the authority, granted by the people of Alaska, to make decisions, after appropriate consideration of the relevant factors, regarding the use of fish and game resources.