WAYNE E. HEIMER - FEDERAL ASSUMPTION OF FISH AND WILDLIFE MANAGEMENT IN ALASKA

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Abstract: Shared opposition to the Alaska oil pipeline in the early 1970s resulted in alliance of Alaska Natives with environmental protectionists. For helping Alaska Natives forestall oil development until aboriginal claims were settled, protectionists received Alaska Native support of a congressional mandate placing at least 80 million acres of land in federal conservation systems. Legislative designation of these lands required another act of Congress. This act was drafted by environmental protection interests in cooperation with Alaska Natives. In deference to their former partners, preservationists wrote a racial "subsistence preference" for Natives into their legislation when it was introduced in the House of Representatives. Realizing that racial preference (along with its converse, racial discrimination) would have to be coerced in the equality-based state of Alaska, authors of the legislation identified a "hammer" to force racial preference. This "hammer" was threat of federal takeover of fish and wildlife management if the state didn't institutionalize racial preference/discrimination. In the Senate, both race preference and the "hammer" of federal takeover were deleted from the preservationist's legislation before it became law. Nevertheless, ever since passage of federal subsistence preference, the federal bureaucracy has threatened the State of Alaska with federal takeover if it fails to institutionalize "rural" (alternate language for Native) preference.

Alaska's constitution precludes discrimination among Alaskans, so Alaska could not comply with the federal preference law. As a result of its inferential interpretation (that federal takeover language is still operative even though it was deleted from the legislation before passage), the U.S. Department of the Interior exploited a passive Alaska Governor to take over wildlife management responsibilities on federal lands in 1990. The next governor, who insisted on the state's right to manage, filed a lawsuit to clarify state and federal management roles. The state lost at the Federal District Court level, and appealed the decision to the Ninth Circuit Court of Appeals. However, the subsequent governor (who succeeded the "state's rights governor") dropped the appeal to keep a campaign promise he'd made to secure Alaska Native endorsement of his candidacy. (Native power brokers, hoping for federal establishment of race-based preference, preferred federal management.) The dual (state/federal) management system created by these events persists even though it has proven spectacularly inefficient, and demonstrably harmful to "jointly" managed resources. Reasons "dual management" has failed include the increasing tendency toward political rather than biologically sustainable harvest allocations based on social considerations rather than biological data, particularly with respect to Dall sheep.

Expanded federal takeover of fisheries, navigable waters, and other uses on state lands which might affect subsistence harvests on federal lands is scheduled for October 1999. Presently the situation is at impasse. Wealthy and politically powerful Alaska Native corporations favor a federal management takeover, which offers the illusion of exclusive, unlimited use of fish and wildlife to Alaska Natives plus lucrative federal contracts for their tribes to manage Alaska's fish and wildlife. Alaska's Congressional delegation and Governor insist the only way to eliminate the federal takeover is to amend Alaska's Constitution to allow preference/discrimination. Other Alaskans, including senior Alaska Legislators who may control the legislature on this issue, remain committed to equality and, to date, have not allowed amendment of Alaska's constitution to comply with U.S. Department of Interior interpretation of the federal subsistence preference law. When the rhetoric surrounding this issue is stripped away, the federal side must maintain that even though the law does

not provide for federal takeover, federal takeover is permissible because the original "committee intent" (remember the federal "hammer" to force Alaskan preference/discrimination) "trumps" actual Senate amendments prohibiting federal takeover.

The two preceding papers by the Demarchi brothers and Donald Armentrout discuss and extol the necessity of preserving the traditional cooperative roles of state and federal management agencies. This traditional arrangement has been that the states take ownership and assume management responsibility for resident fish and wildlife as part of their statehood agreements. On federal lands within the states, federal land management agencies protect and manage the habitats used by the state's fish and wildlife. "State management" has traditionally included primary responsibility for research on resident wildlife as well as allocation of harvests through setting of seasons and bag limits. This has been a highly successful arrangement, where a spirit of cooperation in conservation and enhancement of wildlife for the public good has prospered along with the wildlife and fish resources of the states.

In present day Alaska, this traditional and highly successful arrangement has been set aside in favor of what can be most politely defined as a social experiment in federal fish and wildlife management where the state has no real role. Based on their anticipation of amendments to the Alaska National Interest Lands Conservation Act (ANILCA), which would empower them to take over actual wildlife management on federal lands, the U.S. Departments of Interior and Agriculture usurped the traditional role reserved to the states (management through allocation of harvests, seasons, and bag limits) in 1990. The anticipated amendments never materialized, but the takeover occurred anyway. It is to be expanded to fisheries management on October 1, 1999.

METHODS: Federal takeover of wildlife management in Alaska occurred as the result of a series of events which I present in a lengthy annotated chronology (Appendix A). I prepared this chronological history as a "roadmap" to navigate among key elements of the ANILCA subsistence preference controversy during the 4.5 years I spent as a "dual management" researcher, analyst, and historian assigned to the now-defunct Alaska Department of Fish and Game ANILCA Team. Initially, my team assignment was to provide evidence of harm to Alaska's wildlife management programs resulting from the federal wildlife management takeover of 1990. That is, I was assigned to document "harm" so the state would have "standing in court" to sue the federal government (Alaska v. Lujan/Babbitt) for return to the traditional management arrangement (referenced above) called for under the Alaska Statehood Compact. We succeeded in showing harm to state management resulting from federal usurpation of wildlife management on federal lands, were granted standing in court, and the Babbitt suit, as it came to be called, began its journey through the courts.

RESULTS AND DISCUSSION: When I presented a paper (Heimer 1980) on this topic almost 20 years ago at the Northern Wild Sheep and Goat Council, Bill Wishart asked if my concerns were for conservation or for state management control. At that time, I couldn't say. My answer is now, emphatically, "I am concerned about conservation!" Here's why.

Throughout human history, there have been few conservation successes. The most prominent and well documented of these successes have been localized in North America, and have been tightly linked to high status of publicly owned and available natural resources in which all citizens hold a vested interest. Historically this interest has been focused on harvesting the surpluses produced by modern wildlife management of these common property resources. If, as I conclude, conservation success flows from the linkage between public ownership and a broad base of interested user-conservationists, a departure from this conservation strategy should carry some risk of failure. This risk would result from limiting harvest oppor-

tunity to a small, elite segment of the formerly-broad user base. Predictably, if successful conservation results from a broad owner/user base, the results of limiting use to a small privileged group will compromise the status of resources in the broad public mind, and eventually compromise effective conservation. If through no other mechanism, conservation funding would be reduced.

The move toward federal management represents such a change, in that it essentially privatizes the ownership of fish and wildlife resources by reserving harvest opportunities for a socially-perceived racial minority that presumably "deserves" the privilege as restitution for past grievances. Under the federal plan, the broad user base, which formerly funded conservation through self-imposed taxes, would be excluded to provide a euphemistic "rural preference." The essence of "rural preference" in Title VIII of ANILCA has historically been, and continues to be, racial preference for Alaska Natives. Alaska Native power brokers make no secret of the fact they hold being Native should convey different rights of use on Natives than on non-Natives because of spiritual ties between Native traditions associated with fish and wildlife harvests and Native existence as Natives. This position has resonated well with federal policy makers in Washington, D.C., although it's theological underpinnings are slightly attenuated by replacement of emphasis on religion with emphasis on "cultural diversity." As recently as summer 1998, Alaska Senator Frank Murkowski reported U.S. Secretary of Interior, Bruce Babbit, told the Senator, "We have an agenda here, so stay out of our way."

Of course we may only infer what the federal agenda is. I suggest two possibilities. The first, and most obvious (inferred from repeated Department of Interior justification of federal takeover on the basis of "Indian trust responsibility") is compensation for past wrongs done to other American Indians by the federal government. It may seem reactionary or pretentious on my part to make this assessment and declare it a violation of law, but I think it logical because of the clarity of evidence on the subject. The legal intricacies that define "trust responsibility" require that the federal government be the major superintending force in the lives of American Indians for which the government has trust responsibility. When Alaska Natives accepted the settlement terms of their aboriginal claims in 1971, all parties agreed the existing federal trust responsibility/tribal reservation system had been a failure, and pointedly defined a new relationship between Alaska Natives and the federal government. Settlement of the Alaska Native claims was pointedly race-neutral, and it was established that the federal government was no longer to be the major superintending factor in lives of Alaska Natives. They were essentially freed from second class citizenship as "incapable wards" for which the federal government had trust responsibility, and allowed to chart their own path independent of federal superintendence. The U.S. Supreme Court rendered this decision in 1998.

The relationship between Alaska Natives and the federal government contrasts markedly with the relationship between the federal government and other treatied Indian tribes in the continental U.S. and Canada. Neither Alaska Native leaders nor the U.S. Department of Interior is willing to recognize this as a fact stated by the U.S. Supreme Court. As a result, the well-intentioned, beneficent federal government is more than willing to again relegate Alaska Natives to second class citizenship for which it claims "trust responsibility", although the preposition "for" has been casually changed to "to", which clearly allows the "trust" to manage the "trustees." Hence, my conclusion is that grievance politics is a major factor driving the federal program.

Reversion to the outmoded doctrine of "federal trust responsibility" manifests itself through blind federal management board acceptance of what has come to be known and recognized as "Traditional Ecological Knowledge", or TEK. At its best, TEK represents the cumulative knowledge of humans with long practical experience relating to the managed resources in their area of residence. The Alaska Native/federal management axis holds this source of information has been steadfastly ignored

by state mangers over time, and has resulted in injustice to Alaska Natives who had insufficient influence on state management regulations. This position ignores the state's fish and game advisory committee system which has been operative in assuring local input to the Alaska Boards of Fish and Game since statehood.

In my 25 years of management experience and during my specific ANILCA team assignment to review game regulation histories since statehood, I found no cases where ignoring local input could be documented. The Alaska Board of Game has, historically established a record of considerations and findings prior to making decisions. Still, there are numerous examples of Alaska fish and game regulatory Boards denying petitions for special and specific uses, some of which were from local Native groups. However, just as many or more were from other special interests. Over the last 20 years, it has become increasingly uncommon for the Alaska Boards of Fish and Game (which make regulations on seasons, bag limits, etc.) to simply "grant" any local or special interest group's request without careful review of all aspects of the proposal, including supporting biological and management data. Typically, it takes several attempts for groups other than the Alaska Department of Fish and Game to achieve a regulatory change. This is because it usually takes several "rejections" over several regulatory board cycles for the special interest to gather and present all the information required to justify their proposed changes. Alaska Natives and federal managers portray this reasoned caution (to institute or change existing regulations) on the part of Alaska's regulatory boards as refractory to rural (i.e., Alaska Native) input. In fact, Alaska's wildlife regulatory history indicates the contrary. Perhaps a contrasting case could be made for fisheries regulations. I did not review fisheries management history. Grievance may be in the eye of the beholder.

Under the rubric of increasing responsiveness to "local" input, the federal system has implemented a policy (precipitated by a Bureau of Indian Affairs (BIA) solicitor's application of ANILCA Title VIII from state to federal regulators—see Appendix A) of accepting TEK on an equal or preferential basis with biological data from the managed populations. When use of TEK is at its best, this should not cause a problem. However, application of TEK is not always "at its best." When not "at its best," TEK ranges from folklore or "just so stories" with no factual basis (e.g., that caribou will be suffocated by shed muskoxen hair), to synthesized or broadly translocated TEK used to manipulate the Federal Subsistence Board, usually to exclude non-local users.

Unquestioning federal acceptance of TEK does not bode well for the long-term conservation of wildlife. Where biology and modern science have not been applied to the management of wildlife harvests and habitats, conservation has failed. Frequently, regulations implemented by the federal government since its takeover of wildlife management in 1990 have been based more on political expedience (often involving spurious TEK) than on biological data. The results have been social stress and resource failures (Heimer 1993a, b, c and Heimer 1996a, b, c, d, e, f) as well as arbitrary discrimination against non-Native rural residents (Heimer 1996g). A detailed case history of Dall sheep management for subsistence use in Alaska (Heimer 1998) illustrates these failures.

An additional hazard to long-term conservation is that federal management (based on limiting participation justified by local bias using TEK of questionable validity) is that it pushes otherwise-competent state managers into bad decisions. With respect to subsistence management of Dall sheep, the state's managers have, for politically recursive reasons, maintained female sheep harvests from depressed and declining populations, allowed unprecedented liberal, high-risk subsistence harvest seasons with no realistic harvest reporting requirements in place, and invested heavily in esoteric federal studies that have no apparent management value (Heimer 1998). The following paper in this conference will review historic Alaskan state/federal cooperative efforts relating to Dall sheep which occurred primarily under the traditional state/federal model of shared responsibility for managing wildlife and habitat. (I was

responsible for many of them under the traditional arrangement.) Additionally, the next paper will review examples of "post-takeover era" studies that now pass for cooperation, but hold no promise for sustaining or increasing human benefits through federal or state management. While projects such as these new-era cooperative efforts appear worthwhile because they keep state managers involved in research or surveys on federal lands, they actually represent cooperation for cooperation's sake.

[Supplemental note: With respect to federal fisheries takeover, the era of cooperation, even for cooperation's sake, appears to have ended. In a recent example, high-ranking ADF&G managers, some with decades of commercial fisheries and subsistence management experience, spent nearly two years working on a cooperative fisheries management strategy to protect fisheries resources and minimize user trauma at federal takeover. When these experienced state managers took their work to the federal management board in late August of 1999 their efforts were dismissed without consideration; their input was not needed. Indications are that much federal management will be contracted to Alaska Native tribal entities.]

The cumulative result of political pressures and continual arbitrary actions by the federal management board has been loss, by state managers, of the very will to manage for human benefits, which I suggest was fundamental to the unique success of North American wildlife restoration and conservation. Should successful management, as I suggested earlier in this discussion, be linked to production of broad human benefits from commonly held resources, loss of the will to manage by trained professional managers will result in their being content to "rearrange deck chairs on the 'Titanic' of wildlife conservation," which has clearly hit a "federal iceberg." Cooperation *may* occur; management to sustain or increase human benefits is highly unlikely to follow.

The other possible federal motivation, to which I alluded many paragraphs ago, is the perhaps sincere belief that federal management will result in a considerable improvement in conservation. I doubt the ability of the federal government to improve on conservation by transforming it from the cumulative, voluntary societal decision (by "owners" with a vested interest to practice self-interest conservation by obeying hunting regulations which assure a greater harvest over time) into an exclusive and expensive government activity.

This federal, or central government, approach to conservation is not new. It has been generally applied to conservation in Africa for almost as long as the successful North American system has been in effect. Compare the results. In most cases African governments are exclusively responsible for conservation, and too often must practice extreme coercive management of their citizens to protect wildlife populations. Paradoxically, they are often dependent on funds generated by hunter-conservationists from North America. How successful have these African efforts been in comparison with North America? Will application of the "African central government model" result in improved conservation in Alaska?

The most visible federal management effort to date has been the Endangered Species Act. Evaluating federal management effectiveness under this program may indicate how effectively central government conservation can be expected to function. Interior Secretary Babbitt's disingenuous and self aggrandizing pronouncements in early 1999 notwithstanding, for the money spent, results in this admittedly difficult area of management have produced vanishingly little. Secretary Babbitt's repeated glowing accounts of species "saved" wither under scrutiny, which shows most federal "successes" were not results of federal management, but consisted of de-listing species that were erroneously listed in the first place. Data suggesting central government conservation will succeed are scarce. Data suggesting it will fail (at least in comparison to the traditional North American system) are abundant.

In summary, what we have in Alaska is a social experiment with an unproved approach to conservation in North America. Is there an answer?

Generally, the issue is at impasse. Reference to law, history, and recent U.S. Supreme Court decisions suggests the answer is clearly that fish and wildlife management is a right reserved to the individual states (Seekins et al. 1998). Nevertheless, administrative federal expropriation of the state's right is far advanced in Alaska. It seems obvious that today's U.S. Supreme Court would reaffirm the right to manage lies with the states, but getting the issue before the Supreme Court for adjudication is extremely difficult. Both federal interests and the present administration of the State of Alaska resist resolution of the issue by the U.S. Supreme Court because, they publicly state, Alaska Natives won't like the result. This contention is verified by Alaska Native positions of record. In Alaska, electoral politics involving Alaska Native money and influence appear to drive the present state administration (which has openly acknowledged it owes its initial election to Native interests by withdrawing the Babbitt suit, thus preventing it from reaching the Supreme Court). At the federal level, the broader social agenda of minority preference to recompense for past sins is acknowledged. The fact that environmental preservationists (which are major players in national electoral politics) favor federal management, with its already highly and increasingly restrictive elimination of consumptive uses of fish and wildlife, remains unacknowledged. However, recent proposed amendments to ban trapping on all federal wildlife refuges certainly appear to buttress the validity of this linkage.

The current proposed solution supported by those averse to adjudication is amendment of Alaska's Constitution to allow preference (or discrimination depending on how it affects you personally) consistent with federal interpretation of ANILCA to do things that the text of the law itself will not allow (see Appendix A). The suggested method of changing basic equality among Alaskans would be a popular vote on a constitutional amendment proposed by the Governor and Senator Stevens. To date, equality-driven Alaska legislators opposed to acceding to federal coercion by codifying federal preference/discrimination in Alaskan law have been able to block placing the proposed constitutional amendment before Alaska voters. This has not been simple. These legislators have had to resist intense pressure during five special sessions of the Alaska Legislature called specifically to force them to concede to federal demands.

Alaska Natives have allocated millions of dollars for advertising to assure the amendment is placed on the general election ballot and passed. I consider it unfortunate that the major "pro-preference players" are more interested in an emotional "settlement by vote" than in a reasoned decision on whether laws are made on the floor of Congress through actions of elected representatives, or by establishing "committee intent" for subsequent interpretation by federal judges and solicitors to further the social agenda of federal bureaucrats. This difference lies at the heart of federal fish and wildlife management takeover in Alaska.

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APPENDIX A: AN ANNOTATED CHRONOLOGY OF FEDERAL TAKEOVER OF WILDLIFE AND FISHERIES IN ALASKA:
[Author's note: Some reviewers of this annotated chronology (and there have been many over the last seven years) were uncomfortable with my selection of events and even more uncomfortable with my interpretive annotations. Where I was demonstrably wrong, I have changed text and comments. Since early reviews, I've found no credible reviewer able to show me where I should make further corrections of fact. The opinions I include (identified as such) are, of course, my own and are subject to change as further facts requiring a change in opinion are documented. I'd rather be right than consistent. WEH]

In Appendix A, I have listed historical events, ancillary facts, and some interpretive comments. I have indented, italicized and highlighted in boldface type the inclusion of related ancillary facts, together with my interpretive comments, so readers will know when I have departed from historic events directly and strictly related to the history of federal assumption of fish and wildlife management in Alaska.

—Prior to the 1960s, Native claims throughout the U.S. had been variously filed, considered, set aside, and scheduled for reconsideration without any real settlement.

—In the 1960s, Indian tribes in the Northeastern U.S. were successful in getting court judgments requiring the government to honor terms of existing federal treaties.

—General interest in aboriginal claims increased along with social awareness of past Native American grievances (remember the "Wounded Knee" demonstrations and a spate of grievance books such as "Bury My Heart at Wounded Knee," and later films such as "Dances With Wolves").

—During the 1960s, Alaskan Natives filed aboriginal claims, sometimes claiming discrete use areas, sometimes the entire state. Nothing much happened other than these claims began to grind their

way through the courts.

—In the mid-to-late 1960s the environmental movement began to define and achieve its agenda. Many historians date "Earth Day" 1965 as the beginning of environmental political power. The first major impact this agenda had on Alaska was passage of the Marine Mammal Protection Act. This act took marine mammal management from the state, placed it in the hands of the federal government, and limited use of marine mammals on the basis of race.

—Also in the late 1960s, oil was discovered on Alaska's north slope.

—After running one ice breaking tanker through the Northwest Passage, it became obvious that getting the oil to market was going to require a pipeline.

—Not everyone thought the pipeline was a great idea. The increasingly influential environmental community opposed it because it would transect what the community saw as the untrammeled, pristine Brooks Range. It was clear that the pipeline would require a road, and the North Slope Natives also opposed the pipeline and road because they would bring "outsiders" into what they saw as "their" country...even though they did not "own" it by any conventional definition.

—In order to meet their common goal, opposition to the pipeline, the environmental community and Alaska Natives formed an alliance in spite of their obviously disparate views on human use of animals. Cynics (or prophets) of the day asserted a devious, anti-hunting agenda drove the environmentalists to form the "unholy alliance" with the long term agenda of limiting the total amount of hunting opportunity in the future.

***Ancillary fact**: Whether the cynic/prophets were right in their assertion, federal wildlife management through the Federal Subsistence Board has certainly decreased hunter use of federal public lands.*

—Alaska Natives were the dominant legal force in this alliance because the pipeline could not be built until title to the pipeline right-of-way was secure. This meant the Native land claims had to be settled before the pipeline could be built.

—The alliance was successful. Using the Native land claims as the major issue, and with the support of the environmental community, pipeline construction was delayed until the Alaska Native Claims Settlement Act (ANCSA) was passed in 1971. Alaska Natives got 44 million acres of land and approximately one billion dollars, half of which the state had to pay out of oil and gas development revenues.

***Ancillary fact**: The state paid this debt "up front," (which is one reason permanent fund dividend checks are not even larger than they are). This debt is no longer owed.*

—Included in ANCSA was Sec. 17 (d) (2), which was what the environmental community got out of the deal for supporting Native claims interests. This section created the vast new national parks, refuges, forests, and wild and scenic rivers under the Alaska National Interest Lands Conservation Act (ANILCA) in 1980. ANILCA was primarily a land-control act generated by the environmental community and federal land-management agencies that wanted more Alaskan land. Their ties to Alaska Natives were sufficiently strong that Title VIII which, as drafted in the House of Representatives, included not only legal recognition of subsistence on a **racial basis** (like the Marine Mammals Act) but also provision for a **federal management takeover** if the state did not provide race-based subsistence preference on federal public lands. **These committee draft provisions did not make it into the final bill (they were "amended out" by the Senate), which was signed into law by President Carter.**

—The House of Representatives positions on racial preference and federal management takeover were objectionable to many Alaskans. In an effort to keep Congress from including Title VIII (as drafted and presented during committee hearings

on ANILCA), Alaska's Congressional delegation (primarily Senator Ted Stevens) recommended to the Alaska Legislature that it pass a state subsistence law as a preemptive measure. Acting on this advice, the legislature passed the state's first generic subsistence law in 1978.

—In spite of the state's subsistence law (which antedated ANILCA by 2 years), Congress included a modified version of Title VIII (the subsistence provision) in ANILCA anyway.

—In 1980, ANILCA finally made it to the floor of congress (after President Carter forced the issue by creating immense, expansive National Monuments (using the Federal Antiquities Act) that tied up Alaska's economic future so tightly that Senators Stevens and Gravel were willing to compromise).

> ***Ancillary fact**: The original House version virtually precluded economic development in Alaska.. Consequently, Alaskan Senators Stevens and Gravel threatened to block it in the Senate. When they did this, President Carter told them that if they did, he'd hurt them so badly they'd be begging for a compromise in a year. The Senators thought the President was bluffing, and blocked the bill in the interests of Alaskan economic development. President Carter wasn't bluffing. The result was imposition of National Monument status (which ties up all economic development) on almost half of Alaska, a much worse economic situation than the ANILCA land designations.*

***Interpretation**: Because Senators Stevens and Gravel were more concerned with economic development than state management of fish and wildlife (which they would eventually "amend out" of the bill) they were willing to make fairly radical compromises to assure further economic development in Alaska. Hence, in retrospect, they compromised the state's right to manage, as called for under both state and federal constitutions, for economic development.*

***Opinion which goes beyond interpretation**: This emphasis on economic development, particularly in rural Alaska still seems to drive Senator Stevens on this issue. I think he still fears federal takeover will stifle economic development.*

—On the floor of the Senate, two important aspects of the House version of ANILCA Title VIII were changed. The first was **pointed elimination of the racial designator for subsistence preference** in Title VIII.

> ***Ancillary fact**: ANILCA, as it was finally drafted in committee went through the House without significant modification. That meant it contained **both** the **racial preference <u>and</u> federal takeover** provisions in Title VIII. However, two important amendments occurred on the Senate floor. The **first** was elimination of racial preference by replacement of "racial" with "rural" preference. It has long been common knowledge that the term, "rural residents," and repetitive use of the term "and non-Native" in the FINDINGS, POLICY, and DEFINITIONS sections of ANILCA were specific to elimination of race as the definer of subsistence preference in the Senate version (which became the text) of ANILCA.*

***The second important amendment was substitution of "judicial oversight" (Sec. 807) for "federal takeover" as the "enforcement teeth"** that was to assure the state provided the subsistence preference defined in ANILCA Title VIII.*

*These two changes by the Senate were **never challenged** by the House, but neither were they ever accepted as valid by ANILCA's original authors, the U.S. Department of Interior, or Alaska Native leaders.*

***Interpretation**: This is why we have controversy over federal take-over today.*

> ***Ancillary fact**: The Senate version of ANILCA (which substituted "rural" for "racial" preference and judicial enforcement for the threat of federal takeover) passed a Democrat-controlled Congress during a Democratic administration (President Carter's) at the 11th hour before*

Congress adjourned in the fall. Passing legislation that contains differences in detail between House and Senate versions is common. Usually, differences in details are resolved by joint House-Senate conference committee and the committee's compromise version goes on to become law. If a conference committee cannot agree on compromises, the legislation is usually returned to the floor of the originating house for further action.

***Interpretation**: From our vantage point (15 years later, and in the midst of an unprecedented administrative federal takeover of fish and wildlife management) this difference between Senate and House versions doesn't look like it was a "detail." Major policy differences are probably too important to simply work out in conference committee.*

Ancillary fact**: By not asking for a joint House-Senate conference on the bill, its **House sponsors (and the bill's authors) tacitly accepted the Senate version.

***Interpretation**: Perhaps there were political reasons for this decision. If a conference committee had failed to resolve the differences between Senate and House versions, there was no recourse but to reintroduce the bill (in the House) during the next session. Considering the passion of the Congressmen and the dedication of high level federal agency bureaucrats to "saving the crown jewels of Alaska" (a commonly used phrase during the emotionally charged ANILCA debates), it is logical to believe the oral history that says the House sponsors planned to amend racial preference and federal takeover language "back into" ANILCA during the next Congressional session. Attempting resolution of differences of this significance in a conference committee would have certainly been a major undertaking, and probably would have precluded President Carter (and Democratic Congressmen) from taking credit for "saving the crown jewels of Alaska" during the upcoming election campaign.*

***Ancillary fact**: As a result of that November's election, the balance of power changed. President Carter lost to President Reagan, and Democratic control of Congress eroded.*

***Interpretation**: This meant the Democratic House leadership (whose specific "race preference or federal takeover" provisions had been replaced by the Senate's "rural preference and judicial oversight") would have to face a decidedly less friendly group during the next session (not to mention a sitting Republican President who favored state's rights, and was certain to veto the amendments).*

***Ancillary fact**: With these realities facing them, the House ANILCA sponsors didn't balk at sending the Senate version to President Carter, who signed it into law (even though it didn't contain the race-preference and federal takeover language the House sponsors wanted).*

***Interpretation:** Apparently accepting the "imperfect" (as they saw it) subsistence enforcement provision for a year was preferable to risking loss of what they had secured with respect to "saving Alaska's crown jewels."*

As passed and without the sort of fine tuning that typically occurs in conference committees, ANILCA is unusually vague and internally inconsistent. This vagueness has allowed interests favoring federal takeover the opportunity to achieve federal management through administrative means even though it appears to be precluded by the language of ANILCA (which has persisted for the last 17 years).

***Ancillary fact**: The Senate's "judicial oversight" provision (which replaced the House's "federal takeover language") was Sec. 807.*

***Interpretation**: This section of the law demonstrates the difficulty of working with ANILCA. Finding out just what Sec. 807 actually says is difficult because readily available copies of ANILCA are said to contain a version of Sec. 807 that has since been amended. This amendment allegedly took place almost 15 years ago. The allegation that Sec. 807 was "amended" was clarified by Fairbanks resident, Stan Bloom, who*

sent me the following e-mail on July 11, 1998. Stan wrote:

"I have two copies that BLM put out in the past Sec. 807 was not amended but paragraph (b) was repealed by P.L. 98-620. It [formerly] said:

> *(b) A civil action filed pursuant to this section shall be assigned for hearing at the earliest possible date, shall take precedence over other matters pending on the docket of the United States district court at the time, and shall be expedited in every way by such court and any appellate court.*

This whole paragraph was repealed. Copies of the laws I have just omit this repealed paragraph and go directly to (c). . . . Sincerely, Stan Bloom"

> ***Ancillary fact**: The readily available version of ANILCA Sec. 807 provides aggrieved subsistence users (who don't think the state gave them sufficient opportunity or allowed them to meet their needs) access to federal court (after they've exhausted the administrative appeal process). If these users prevail in federal court, the court can **direct the state** to provide increased subsistence use opportunities according to ANILCA language.*

***Interpretation**: Because the Sec. 807 process in the commonly available version of ANILCA was followed exactly in the Lime Village moose and Kilbuck caribou management cases before the federal takeover of 1990, I accept Stan Bloom's explanation. The fact that the House version of ANILCA gave hearing subsistence claims a higher priority than **all other activities of the United States District Court and subsequent appellate courts** (deleted by P.L. 98-620) may bespeak a zeal leading to questionable rationality attending the subsistence preference issue in the House of Representatives.*

—Once ANILCA was passed, some unknown person or entity in the Interior Department in Washington, D.C. selected "rural residence" as the "litmus test" of whether the state subsistence law was "of general applicability" as specified (to prevent federal oversight) in ANILCA Sec. 805 (d).

—The Secretary of the Interior immediately threatened a takeover if the state's subsistence law didn't operate according to the federal (rural residence) litmus test.

—The Joint Boards of Fish and Game (Alaska's wildlife regulatory Board) tried to pacify the Secretary by administratively linking rural residence with subsistence preference through regulations (1981).

> ***Ancillary fact**: Governor Jay Hammond and his Attorney General failed, at this point, to assert the state's right to manage indigenous wildlife. For some unknown reason they failed to insist that the feds stick to the letter of Title VIII as passed by Congress.*

—In what came to be known as the Madison case (1985), this administrative (through regulatory) linkage of subsistence preference with rural residence was found to be illegal.

—The Secretary of the Interior immediately notified the State of Alaska, through the Undersecretary for Parks and Wildlife, that it was out of compliance with ANILCA, and threatened yet another federal takeover.

—To avoid this second federal takeover threat, the legislature passed Alaska's second subsistence law, which legally linked preference to rural residence. Once this was done (in 1986), the Undersecretary for Parks and Wildlife, Bill Horn, notified Alaska that it was once again in compliance with ANILCA; and, that a federal takeover would not occur.

—The second subsistence law was challenged by a citizen named McDowell.

—In ruling on the McDowell case (1989), the Alaska Supreme Court said it was unconstitutional to discriminate among Alaskans on the basis of

their residence location.

—Based on the Interior Secretary's judgment that Alaska was again out of compliance (having failed the rural residence litmus test again) the federal government took over subsistence harvest allocation of wildlife on federal lands (about sixty percent of Alaska).

—To accomplish this takeover, the Secretaries of Agriculture and Interior used the administrative federal rulemaking procedures to establish an administrative structure (the Federal Subsistence Board) for this function. Federal rulemaking was the vehicle for establishing the Federal Subsistence Board because ANILCA (as passed by Congress) contained no provision for federal takeover (see compromises above).

> ***Ancillary fact**: Congressional compromise produces vague laws.*

Interpretation**: ANILCA may be the grandest compromise ever produced by Congress, even though it never underwent joint House-Senate conference resolution. Looking at what has happened 20 years after ANILCA passage,* ***it appears the forces behind the House version simply decided to "save" Alaska through federal administrative means instead of risking legislative compromise.

> ***Ancillary fact**: When Congress passes a vague law, Congress implicitly refers implementation of the law to the responsible agencies (in the case of ANILCA Title VIII, the Depts. of Interior and Agriculture). When this happens, the agencies refer the job of interpreting the vague law to their solicitors. Typically, the solicitors refer to committee testimony to determine legislative intent.*

***Interpretation: The "subsistence problem" relating to ANILCA stems from the fact that the committee intent was different from the law Congress passed on the floor.** When federal solicitors went to committee hearing records to establish legislative intent, the problems were obvious because the Senate "amended out" the House committee intent from the final version of the law that it passed on the floor.*

> ***Ancillary fact**: Because of the changes made in the Senate, the Depts. of Interior and Agriculture no longer had takeover language in the bill. Consequently, they had to use administrative means, federal rulemaking, to establish the machinery, called the "administrative structure" (the Federal Subsistence Board) for federal takeover.*

—This Federal Subsistence Board was composed of the regional directors of the federal land-management agencies in Alaska plus the director of the Bureau of Indian Affairs (BIA). In addition to discharging their specific agency responsibilities and mandates, these directors are supposed (according to federal agency interpretation of ANILCA Title VIII) to manage subsistence harvest allocation by passing suitable regulations, seasons, bag limits, and user restrictions for federal public lands.

—Actions of the Federal Subsistence Board were unsatisfactory to the state in many cases.

***Interpretation**: To me it seems obvious the two responsibilities, achievement of federal land management agency agenda and subsistence management, conflict for some federal land management directors (most notably the National Park Service).*

> ***Ancillary fact**: The record shows the Regional Directors on the Federal Subsistence Board are not above furthering their agencies' agendas through use of what they call, "ANILCA-mandated (rural) subsistence management authority" inferred from House ANILCA committee intent language (see Discussion section).*

***Interpretation**: When it has suited any individual director, each has placed his agency's agenda regarding control of federal land above allowing subsistence uses. For this reason, I suggest federal land-control (the primary job of a federal land-*

management agency regional director) is a primary cause of the symptoms that define "the dual management-subsistence problem."

Ancillary fact: ANILCA was not a subsistence law, but a federal land-control law, which occurred at the behest of federal land-management agencies and the national environmental community. Subsistence is a secondary priority for ANILCA, just as it is for federal land managers.

—Creation of the Federal Subsistence Board to take over subsistence harvest allocation, as well as the cumulative effects of "agency interest" actions by individual agencies through the Federal Subsistence Board, eventually led to sufficient state dissatisfaction that legal action was undertaken.

—Alaska Governor Hickel initiated litigation against Secretary of Interior Lujan, and subsequently Secretary Babbitt (1992), in an effort to reestablish state management of indigenous wildlife (as guaranteed in Alaska's Statehood agreement and buttressed in ANILCA) rather than implementation of land-control regulations (driven by *ex post facto* interpretation of committee intent rather than what Congress actually passed). It was particularly onerous to the state that federal management was established by federal agencies through the federal rulemaking process, rather than by deliberated legislation.

—As managed by Hickel's Attorney General, Charles Cole, and the Federal District Court Judge, H. Russell Holland, this suit evolved into a challenge of "the standing" of the federal government to manage indigenous wildlife when it was on federal public land as defined in ANILCA. Judge Holland eventually narrowed the focus of the Babbitt case to what he called the "who" question.

***Interpretation**: I don't know whether Attorney General Cole had any control of the direction this suit took, but what started out as an attempt to make the feds abide by the text of their own law, ANILCA, got to be a much larger question. The results of management of the case in this manner (whether it involved the Attorney General or not) were highly significant in that they opened the door to federal takeover after it had been deleted from the text of ANILCA before passage.*

—Alaskan Natives saw this litigation, the state's effort to regain state management of wildlife, as a threat.

***Interpretation**: Native opposition is understandable given the racial preference objectives of record by the Alaska Federation of Natives (AFN). After all, if the state were to prevail, the federal agencies, which had been currying favor with Alaskan Natives through permissive subsistence regulations, would no longer be capable of doing so. Also, if the federal system gave way to the state system, "federal trust responsibility for Native Americans" could no longer provide the prospect of federally driven **race-based** Native preference. Racial preference has been the objective of Alaska Natives since the Marine Mammal Protection Act made it a fact more than 30 years ago.*

***Ancillary fact**: Native interest in establishment of "trust responsibility" associated with Alaska Native sovereignty issues was repudiated four times by Judge Holland in 1995. Holland's decision was overturned by the Ninth Circuit Court of Appeals. The issue was eventually decided in favor of the state by the U.S. Supreme Court in what was called the Venetie case.*

***Interpretation**: The U.S. Supreme Court ruled that the Venetie Indian Reservation was not "Indian country." Because "trust responsibility" is linked to "Indian country" and because there is no "Indian country" in Alaska, there can be no "trust responsibility" on the part of the federal government for Alaska Natives. Hence, federal "trust responsibility" lost its power as a linkage between Native sovereignty and racially based subsistence preference with the Venetie decision.*

***Ancillary fact**: In spite of the U.S. Supreme Court ruling, state management was unacceptable to Alaska Native power brokers. The offi-*

cial AFN position of record still favors maximal federal management in lieu of race-based Native preference.

***Interpretation**: Recalling the racial basis of marine mammal use illuminates the rationale of this position. These facts form the basis of my suggestion that race-power is a contributing cause of the symptoms we call the dual management-subsistence problem.*

—The initial ruling in Federal District Court (Alaska v. Babbitt) was unsatisfactory to the state. The state appealed to the Ninth Circuit Court of Appeals (1994).

***Ancillary fact**: In this ruling, Judge Holland reviewed the history of ANILCA passage. The facts about amendments on the Senate floor at the 11th hour come directly from his opinion. He found that the Senate had, in fact, "amended out" federal takeover from ANILCA, but rendered his opinion that Congress surely must have meant to provide federal takeover responsibility. Hence, Judge Holland's answer to his "who" question about who should manage on federal land was, "the feds."*

***Interpretation**: It is no wonder the state appealed the case to the next higher court, the Ninth Circuit Court of Appeals.*

—Governor Hickel retired from the Governorship.

—In the course of a very close campaign for Governor's office, the Knowles-Ulmer ticket sought endorsement of the Alaska Federation of Natives by promising to drop the state's litigation against Secretary Babbitt. The Knowles-Ulmer ticket won the endorsement of AFN, and eventually a "three party" election by slightly more than 500 votes.

—Immediately upon election, and only days before the case was to be argued before the Ninth Circuit Court, Governor Knowles canceled the Babbitt suit because, he said, "many Alaskans thought it was anti-subsistence."

—About this time, President Clinton's newly appointed Bureau of Indian Affairs Secretary, Ada Deer, appointed an activist lawyer (Robert Anderson) with a background in ANILCA-related Native interest litigation, to the post of BIA solicitor. Shortly after this appointment, the Federal Subsistence Board received a pointed solicitor's opinion from Mr. Anderson (1995). This opinion essentially told the Federal Board that it could not deny any proposal offered by a Federal Regional Subsistence Advisory Council without explaining why, according to criteria described in ANILCA Sec. 804 **(which deals with state--not federal--management)**.

***Ancillary fact**: Sec. 804 says:*

*The **state rulemaking authority** may choose not to follow any recommendation which it determines is not supported by substantial evidence presented during the course of its administrative proceedings, violates recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs. If a recommendation is not adopted by the **state rulemaking authority**, such authority shall set forth the factual basis and reasons for its decision (emphasis added). [Note: the state rule-making authorities are the Boards of Fish and Game.]*

—Federal land-management directors on the Federal Subsistence Board lacked either the courage or biological understanding to apply these criteria at their April 1995 meeting, as they simply "rubber stamped" all proposals from Federal Regional Subsistence Advisory Councils. Notable results included highly arbitrary and divisive decisions about who could and could not hunt moose in the Kenai Peninsula, closure of the pipeline corridor to bowhunting (later reversed upon public outcry), and elimination of caribou hunting on the Bristol Bay side of the Alaska Peninsula (presumably so caribou would migrate unimpeded to the Pacific side-which is not really satisfactory caribou habitat, though caribou sometimes pass through there). Additionally, the Dall River access controversy, and considerable unwar-

ranted expansion of the Arctic Village Subsistence Management Area for Dall sheep, developed.

Ancillary fact: *Accountability to documentable fact or empirical scientific data were not compelling factors in these decisions. Proposal by a Regional Subsistence Advisory Council (buttressed by what has come to be known as local knowledge or "traditional ecological knowledge") was all that was required.*

—After canceling the Babbitt litigation, Governor Knowles appointed Lt. Governor Ulmer to come up with a "consensus plan" to solve the dual management-subsistence problem (1995). Lt. Governor Ulmer used "quiet diplomacy" to derive her "consensus plan." The plan failed.

Interpretation: *I think the plan failed because the Lt. Governor did not seriously consider input from interests outside the Alaska Native community, Alaska's Congressional delegation, and the environmental community. Her "diplomacy" was so "quiet" and her plan so Alaska Native position centered, other user groups felt left out of the plan.*

—In a case related to the Babbitt suit, Judge Holland set out to solve the "where" issue of federal management. The case was called the Katie John case. Alaska Native plaintiffs in this case had asked the Federal District Court Judge (Holland) to rule that navigable waters are federal public lands upon which the federal government has subsistence management jurisdiction. Holland ruled in favor of the Natives. The state appealed.

—Upon appeal, the Ninth Circuit Court of Appeals overturned Holland, but did find that the federal government has reserved water rights for federal installations.

Interpretation*: Federal reserved water rights assure that any federal installation that the federal government may establish automatically has reserved, for it, enough water to serve the functions of that installation. Typically these rights assure the conventional water needs for federal facilities such as military bases or federal holdings that may require irrigation water.*

In its ruling, the Ninth Circuit Court found that because subsistence fishing occurs in **some** navigable waters, and the federal government has reserved water rights, the federal government has **some** responsibility for subsistence preference provision in **some** navigable waters.

Ancillary fact*: Reserved water rights is a concept from irrigation law, which basically says an upstream user cannot deprive a downstream user of water to which he is legally entitled. Federal reserved water rights assure Federal agencies of enough downstream flow to fulfill the purpose for which any federal facility may be established.*

Interpretation*: The actual relevance of enough* ***downstream*** *water flow to flush toilets at a National Park headquarters or to cool generators at a Department of Defense radar site may be only distantly related to allocating flow for salmon migrating* ***upstream****.*

—Based on the court's reiteration that federal facilities are assured enough water for their intended function, the federal government proposed, through expanded rulemaking, a plan to assume fisheries management in the navigable waters of Alaska (1996). Under these proposed regulations, the federal government could regulate subsistence (as well as conflicting) harvests of fish and wildlife throughout the state of Alaska.

Interpretation: *Until withdrawal of the Babbitt suit and the reserved water rights decision in Katie John, neither the state nor the federal government took dual management all that seriously. Both assumed the courts would decide the issue. Had Governor Knowles not intervened on behalf of AFN, the courts would have decided the issue. Now that court decisions are no longer an option, both state and federal governments appear to be rethinking their approach to dual management.*

—The feds are moving to take over fisheries based on the claim that, even though "they don't want to," they are forced to by ANILCA mandate.

> ***Ancillary fact**: This is not a credible claim. ANILCA as passed by the Congress of the United States, does not now, nor has it ever contained a mandate for federal takeover.*

***Interpretation**: High-level federal bureaucrats wanted federal takeover language in ANILCA, but could not get it into the final bill. Nevertheless, these feds have taken over using administrative, not legislated, means because it suits their ideological agenda (see any of several recent statements by Sec. Babbitt or 9/9/99 statements by President Clinton).*

> ***Ancillary fact**: The Babbitt suit, as decided by Judge Holland's opinion, represents, to date, the substance of the federal government's claim that it has standing as managers of wildlife and fisheries on federal (and adjoining state) lands as well as the state's navigable waters.*

***Interpretation**: This situation resulted directly from the Knowles administration's dropping the Babbitt suit, and its reluctance to appeal the Katie John decision to a higher court for definition of the extent to which reserved federal water rights define the "where" question defined by Judge Holland.*

*Hence, **federal takeover should not be "blamed on" ANILCA in any way**. If the feds choose to take over, they should clarify the basis of their action. **They are not forced to take over management for subsistence preference by any language in ANILCA**. Most recently (as of 9/9/99) the public justifications offered by Department of Interior spokespersons and President Clinton for the October 1, 1999 federal takeover of fisheries and expansion of wildlife management takeover have been justified exclusively to the public on the basis of Alaska Native subsistence. At least in the eyes of the federal government this is, either "still" or "again," a racial issue.*

***Personal opinion which goes beyond interpretation**: I think the federal government is simply taking over fish and wildlife management in Alaska because it suits the administration's social agenda. The "legal" basis for this takeover relies solely on Judge Holland's opinion, in which said he couldn't imagine that Congress didn't intend for them to do so. Hence, Title VIII of ANILCA appears to be convenient noble justification for the administration to provide racial preference for Alaska Natives while simplifying land management by eliminating non-Native uses from public land. It is politically more acceptable to wrap federal takeover in ANILCA than simply state the federal government intends to eliminate public use of public lands or that it fears Alaskan's cannot be trusted to wisely manage and conserve Alaska's natural resources.*

I think this "federal feeling" is generated by national guilt over the exploitation of indigenous peoples and natural resources in the contiguous 48 states, and maintained by the political success of what has become known as the "environmental movement."

Prior to the Venetie decision, the federal government justified its position by appealing to a manufactured ANILCA mandate to provide preference for "the last indigenous people" by linking "rural preference" to federal trust responsibility for Native Americans. This linkage justified federal takeover by playing on the emotion of a national guilt resulting from the way the American Plains Indians were subjugated 100 years ago. However, in the Venetie decision, the U.S. Supreme Court made it clear that the unsuccessful and antiquated "trust responsibility" doctrine is not to be applied in Alaska. Nevertheless, the Department of Interior clings to "trust responsibility" as a justification (see 9/9/99 comments on the federal takeover issue by President Clinton and Secretary of Interior Babbitt). Although obsolete, this argument continues to be emotionally powerful.

—The present, expanded federal takeover scheduled for October 1, 1999 resulted from Knowles administration decisions to withdraw the Babbitt

suit, and acceptance of the Ninth Circuit Court decision on the Katie John case instead of appealing it to a higher court in an attempt to frame reserved water rights in their traditional context.

—The further incursion of federal management (into fisheries management as well as wildlife allocation) precipitated designation of the fisheries issue as a crisis by the Governor.

***Interpretation**: The crisis appears to be driven by the understanding that federal enforcement of the rural preference will destabilize the Alaskan economy associated with the commercial fishing industry.*

—To deal with this crisis, the Governor appointed a Subsistence Task Force on the subject.

—This Task Force prepared a plan involving amendment of the Alaska Constitution to allow preference/discrimination based on residence location so the State could comply with federal interpretation of ANILCA Title VIII. The plan also involved state adoption of ANILCA Title VIII language and other federal procedure as state law, and some technical amendments to ANILCA.

***Ancillary fact**: The Task Force Proposal was basically a reiteration of Lt. Governor Ulmer's failed "quiet diplomacy" plan of a year earlier.*

—Unwilling to accept this unprecedented level of federal intrusion into state management, the Alaska Legislature, represented by it's standing Legislative Council Committee, filed suit in Federal District Court in Washington, D.C. to reestablish Alaska's statehood rights.

***Ancillary fact**: This suit was not accepted by the District Court (decision in summer of 1999), which ruled the Legislative Council lacked standing to bring suit because the Governor had withdrawn the Babbitt suit with prejudice to secure political endorsement of the Alaska Federation of Natives six years earlier. Further litigation will have to await harm to the state or legislature from the takeover of fisheries management scheduled for October 1, 1999.*

—When the Alaska Legislature met in 1998, there was tremendous pressure from Senator Stevens to amend the Alaska Constitution to allow preference (or discrimination—depending on perspective) so the ANILCA-based federal laws and regulations could be adopted as state law. This position was promoted as "preventing a federal takeover", even though the management process and outcome were entirely those prescribed by the federal government. The legislature tried a number of approaches to resolve the problem, but none were acceptable to Senator Stevens, Governor Knowles, the Federal Government, or the Alaska Native community.

—The issue was successively addressed in two special legislative sessions devoted exclusively to the topic in summer of 1998. Despite intense pressure from the federal government, an intensive lobbying campaign by the AFN, and various commercial interests connected to Native Corporation business, two thirds of the Alaska Legislative House could not be persuaded to pass an amendment institutionalizing preference and discrimination along to the Senate for consideration.

—With this failure, Senator Stevens (chairman of the U.S. Senate appropriations committee) turned up the pressure on the legislature by refusing to block funding for the federal takeover as he had been readily able to do in the past. Moreover, he appropriated 11 million dollars to fund the federal takeover.

***Ancillary fact**: The 11 million dollars was apparently provided to leverage the Alaska Legislators who would not support amending the Alaska Constitution to provide for preference/discrimination. The Department of Interior got one million dollars for planning the takeover immediately upon appropriation. Involved federal agencies are to get the balance (10 million dollars) to implement their takeover if the Alaska Legislature doesn't put Senator Stevens' proposed constitutional amendment on the ballot for approval by Alaskans before October 1, 1999. If the legislature does place*

Senator Stevens' proposed Alaska Constitution change on the ballot (or agrees to) prior to October 1, the State of Alaska is to get the remaining 10 million dollars.

—Governor Knowles has called a final special session of the Alaska Legislature for September 22, 1999, the last possible date to place a constitutional amendment legalizing the preference/discrimination before the Alaskan public before the scheduled federal takeover. The Governor and other preference advocates represent this special session as the last opportunity to "prevent federal management" of Alaska's resident fish and wildlife.

***Interpretation**: I see little difference between a "hostile" federal takeover or a voluntary agreement for the state to manage at the direction of the federal government.*

***Author's Update**: The Governor was unsuccessful in getting the Alaska Legislature to put his proposed amendment before the Alaskan electorate in September. The federal government took over management of subsistence related fisheries on October 1, 1999 along with expanded wildlife management on selected state lands. A number of Alaskans will shortly file lawsuits protesting the federal takeover in yet another attempt to solve the matter by adjudication. The Governor has announced plans to reintroduce his proposed amendment to the Alaska Constitution when the regular session of the legislature convenes in January, 2000. There is serious talk of a Gubernatorial recall drive or impeachment proceedings resulting from the Governor's failure to protect and uphold the state's constitution.*

After the federal fisheries takeover, the Governor appealed the Katie John decision to the U.S. Supreme Court. That appeal awaits action. Alaska Natives have broken ranks with the Governor on this issue.