

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

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hunting. It is anticipated that fishing will be similarly treated under federal regulations to be adopted on October 1, 1999. Dale Bondurant and Warren Olson were denied permits to hunt on federal land because they were "urban residents" of Alaska under ANILCA and its regulations.

Appeals of the denial to hunt on federal land have led to an affirmance of the denial by federal regulatory offices in Alaska under the control of the Department of Interior and the Department of Agriculture. Dale Bondurant and Warren Olson are informed and they believe that the new federal regulations related to hunting and fishing on federal land, effective October 1, 1999, will contain restrictions against hunting and fishing by "urban" residents which will continue to deny them the equal right to hunt and fish on federal lands in Alaska in the future.

Dale Bondurant, Warren Olson, and The Alaska Constitutional Legal Defense Conservation Fund, Inc. maintain such statutes and regulations restricting the right of urban residents to hunt and fish on federal lands in Alaska are unconstitutional and are in violation of their rights as citizens of the United States and residents of Alaska.

SUMMARY OF ARGUMENT

In 1980, Congress enacted Title VIII of the Alaska National Interest Lands Conservation Act ("ANILCA"), 16 U.S.C. §§ 3111-3126, to respond to a perceived failure on the part of the State of Alaska and federal authorities to protect subsistence hunting and fishing in Alaska. Title VIII demands an absolute preference for "rural" Alaskan residents for the taking of all renewable natural resources - including fish and wildlife - on federal public lands in Alaska for subsistence purposes. While recognizing that fish and game regulation has traditionally been a prerogative of the state, Congress authorized the federal government to implement ANILCA's subsistence priority only if Alaska failed to

enact laws of general applicability consistent with ANILCA.

It is the firm conviction of *Amici* that when a federal law, such as ANILCA, is applied uniquely to an individual state, the danger does not lie in that fact alone. The danger lies when such application spawns new doctrines, precedents, interpretations, regulations and/or acts which abrogate the integrity of that state's constitutional sovereignty. When this occurs it must be judicially challenged. *Amici* submit that the application of ANILCA has spawned all sorts of new doctrines, erroneous interpretations of precedents, unconstitutional regulations and acts which have or will abrogate Alaska's sovereignty.

Specifically, ANILCA has been repeatedly adapted and unilaterally adopted into new legal doctrines which have falsely redistributed the time-honored divisions of state and/or federal constitutional sovereignty. ANILCA's ambiguities have fostered these erroneous prescriptions assigned to concepts such as "subsistence," "rural residency," and "customary and traditional".¹ All are undefined and have been consistently interchanged with the concepts of "use" and "user". This interchange has erroneously caused every preferential use to become an exclusionary class of priority user.

Amici believe that a better result is achieved by explicitly identifying the preference use of fish, wildlife and water resources as "personal consumption" which is readily accepted as unambiguous and equally applicable to all users. ANILCA correctly recognizes that federal public lands shall be reserved for enumerated purposes, with identified preferences among beneficial uses. But ANILCA cannot permit Congress to designate an exclusionary class of priority users.

¹Fisher v. Everett, 66 F.Supp. 510 (D.Alaska 1945).

However, under ANILCA, Congress has unilaterally identified rural residents as an exclusive class of priority users and their preference use as customary and traditional subsistence. A classic oxymoron exists when the label of "priority / customary² and traditional subsistence³" is synonymously applied to both use and user. This confusion has inappropriately formed the underpinning for the current political efforts by the federal government to put pressure on Alaska's legislature to pass unconstitutional legislation amending Alaska's Constitution - a core concern of *Amici*.

HISTORY OF ARGUMENT

For years, Alaska's legislature has been under mounting pressure to approve and place before the voters a proposition amending the state constitution to permit the imposition of a rural resident subsistence priority. In 1989 the Alaska Supreme Court struck down similar statutory language, ruling that state legislation attempting to create a rural subsistence priority violated the common use and Equal Protection provisions of Alaska's Constitution;⁴ i.e., specifically, Article VIII, Sections 3 (Common Use), 15 (No Exclusive Right of Fishery), and 17 (Uniform Application Clause). The Court declined to address the question of whether the

²*Shelly v. Kramer*, 334 U.S. 1, 92 L.Ed 1161, 68 S.Ct. 836, 3 A.L.R.2d 441, 445 (1948) ("Racial discriminations which are merely the wrongful acts of individuals can remain outside the ban of the Constitution only so long as they are unsupported by state authority in the shape of laws, customs or judicial or executive proceedings.")

³*Eubanks v. Louisiana*, 356 U.S. 584, 78 S.Ct. 970, 2 L.Ed 2d 991, 995 (1958) ("But local traditions cannot justify failure to comply with the constitutional mandate requiring equal protection of the laws.").

⁴ *McDowell v. Alaska*, 785 P.2d 1, 11 (Alaska 1989) (The Alaska Supreme Court ruled that Title VIII of ANILCA violates the Alaska Constitution. The State cannot discriminate against one class of citizens. The Supreme Court went on to note that several other jurisdictions have struck down intrastate residential preferences in fish and game statutes, stating "This is an equal protection case, and an easy one at that." *McDowell*, 785 P.2d at 1).

priority also violated Article I, Section 1 - The Equal Rights Clause and Article I, Section 7, The Due Process Clause. *Amici* argues that it does.

In 1995 the Alaska Supreme Court held in *Totemoff v. Alaska*,⁵ that the federal government had no authority to regulate hunting and fishing in Alaska's navigable waters, the state was not obligated to follow decisions by the 9th Circuit Court of Appeals on those issues, nor is it bound by decisions of federal courts other than the United States Supreme Court.⁶ However, federal takeover is slated to begin October 1999 despite the Alaska Supreme Court's holding in *Totemoff*.

The State of Alaska, as well as citizens within the state, have vehemently opposed a federal takeover of wildlife management within its borders. However, faced with an impending federal takeover, the Governor of Alaska and Congress have opined, as the state's only option, that Alaskans must amend their constitution to allow for the subsistence priority. This proposed Federal-State Compact requires that the Alaska Constitution will be amended to permit, but not require, the Alaska Legislature to grant a subsistence priority to rural residents. However, the State of Alaska will agree to simultaneously amend its statutes to create a rural subsistence priority. *Amici* believe that such an amendment will serve only to deny each Alaskan citizen as well as all citizens of the United States equal protection to life, liberty and property. Moreover, Congress is without the authority to enter into such a joint federal-state program when such program violates the equal protection of the Fourteenth Amendment to the U.S. Constitution.⁷

⁵905 P.2d 954, 964-968 (Alaska 1995).

⁶*Id.* 905 P.2d at 963.

⁷*Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600, 619 (1969); *Townsend v. Swank*, 404 U.S. 282, 92 S.Ct. 502, 30 L.Ed 448, 456 (1971).

When attempting to craft a solution to the federal government versus Alaska dilemma, it is important for this court to understand the basis of the conflict and law applicable to it. It is equally important for this court to understand the requirements of and the implications of the Public Trust Doctrine, which establishes the right of the public to fully enjoy public trust lands, waters and living resources for recognized public uses. Lastly, it is vital that this court understand the distinction between "use" and "user." Below are several essential elements of the issues before the court.

ARGUMENT

- I. **WHEN CRAFTING A SOLUTION TO THE DISPUTE BETWEEN THE FEDERAL GOVERNMENT AND ALASKA, UNDERSTANDING OF THE BASIS OF THE CONFLICT AND THE LAW APPLICABLE TO IT IS ESSENTIAL.**

A. EQUAL FOOTING DOCTRINE:

By virtue of the Equal Footing Doctrine, as proclaimed by President Eisenhower's historic January 3, 1959 Proclamation⁸, Alaska was admitted into the Union on an equal footing with the other States. In 1977, the United States Supreme Court held that title to public trust assets passed from the federal government to Alaska at statehood through the equal footing doctrine as an element of state sovereignty - not by federal permission.⁹ The federal government

⁸Presidential Proclamation Number 3269.

⁹*United States v. Alaska*, 521 U.S. 1, 117 S.Ct. 1888, 138 L.Ed.2d 231 (1997). *See also Idaho v. Coeur d'Alene Indians of Idaho*, 521 U.S. 261, 117 S.Ct. 2028, 138 L.Ed.2d 438 (1997) (A State's title to these sovereign lands arises from the Equal Footing Doctrine and is conferred not by Congress but by the Constitution itself.)

recognizes Alaska as a beneficiary of the equal footing doctrine.¹⁰

Therefore, the Secretary of Interior's power to control fishing in Alaska's navigable waters and wildlife within its boundaries was extinguished at statehood. At statehood, Alaska's sovereignty contained several essential attributes relevant to control of her resources. One of those is ownership and management authority of submerged lands and its associated benefits of title, which includes Alaska's ownership of all living creatures in those waters. Another essential attribute is the ability to control and manage its wild game.¹¹

As recently as June 19, 1997, Justice O'Connor, writing for the majority in United States v. Alaska,¹² concluded that the State of Alaska succeeded to the federal government title to the beds of navigable waters within Alaska's boundaries at statehood and, thereafter, the State of Alaska had the power to control fishing in Alaska's waters. Alaska also gained management authority over its wild game as an inseparable attribute of its new-found sovereignty in the same measure of administration and jurisdiction as possessed by other states.¹³ Therefore, after title passed to Alaska, any attempt by the federal government to now defeat that title

¹⁰ Section 1 of the Alaska Statehood Act provides: [T]he State of Alaska is hereby declared ... admitted into the Union on an equal footing with the other States in all respects whatever. Presidential Proclamation No. 3269 provides: [T]hat admission of the State of Alaska into the Union on an equal footing with the other States of the Union is now accomplished.

¹¹ Montana Outfitter Action Group v. Fish and Game Commission, 417 F.Supp. 1005, 1009 (Mont. 1976). This decision was upheld by the U.S. Supreme Court in Baldwin v. Montana Fish and Game Commission, 436 U.S. 371 (1978), where the U.S. Supreme Court recognized that 75% of the elk taken in Montana are killed on federal land. Yet, the Court held that the state had the power to manage and conserve the elk, to make such laws as are necessary to protect and preserve the elk, and that the elk are entrusted to the care of the state by the people of Montana).

¹² 521 U.S. 1, 117 S.Ct. 1888, 138 L.Ed.2d 231 (1997).

¹³ See, also, Metlakatla v. Egan, 369 U.S. 45, 57, 82 S.Ct. 552, 7 L.Ed.2d 562 (1962).

cannot succeed. The Court held:

To withhold sovereignty over its inland waters from the state in the absence of compelling reasons and without definitely describing the act of admission the extent of the sovereignty intended to be withheld, would be a violation of the equal footing doctrine.¹⁴

The meaning of the United States Supreme Court is clear. At statehood, Alaska received title to all submerged lands that had not been expressly retained by the United States prior to statehood. A later act of Congress cannot reclaim property already given away.¹⁵ Alaska, in its sovereign and collective capacity, holds title to the fish within trust waters and wildlife in the state for the benefit of the people. That title was perfected 21 years before ANILCA. Therefore, *Amici* contend that this Court should rule that the federal government has no authority due to Alaska's sovereignty to take over management of fishing and hunting on federal trust property in Alaska.

B. TITLE VIII OF ANILCA

The United States Constitution does not make a general grant of legislative power. It reads: "Article 1, §1. All legislative powers herein granted shall be vested in a Congress ..." And then, in Article VIII, §1 it mentions and defines the legislative powers that are granted. Because there is no general grant of legislative power it has become an accepted constitutional rule that the federal government is a government of enumerated (not unlimited) powers.¹⁶ Therefore, when Congress

¹⁴Metlakatla Indian Community v. Egan, 362 P.2d 901, 927 (Alaska 1961).

¹⁵See, also, Idaho v. Coeur d'Alene Tribe of Idaho, *supra* page 6. (this case went to great lengths to reach an even more expansive rendering of the principles expressed in United States v. Alaska, *supra* page 6.)

¹⁶See M'culloch v. Maryland, 17 U.S. 316, 4 Wheat. 403, 4 L.Ed. 579, 601 (1819) ("This government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it seems too apparent to have required to be enforced by all

claims a legislative power, even when it applies to public lands, the question is whether or not that power is one of those granted by the Constitution. The allocation of Alaska's fish and wildlife to a special class based on residence is not one of the powers granted to Congress by the Constitution.

Title VIII of ANILCA demands a priority for Alaska residents who live in rural areas within the state. The lifestyle ANILCA claims to "protect" is limited to this state. ANILCA does not demand any similar priority in any other state in the nation.

Alaska, on an equal footing with the other states, has the power to regulate, control, or prohibit the hunting and killing of fish and wild game within its sovereign boundaries.¹⁷ Therefore, allocation or appropriation of fish and wild game in Alaska is clearly an internal Alaska affair.¹⁸ Contrary to its argument, the federal government does not have any enumerated power under the U.S. Constitution to interfere in Alaska's internal affairs.¹⁹

those arguments which its enlightened friends ... found it necessary to urge. The principle is now universally admitted").

¹⁷See Kleppe v. New Mexico, 426 U.S. 529, 545 (1976) (No doubt it is true that as between a state and its inhabitants the state may regulate the killing ... of [wildlife]).

¹⁸Id. 426 U.S. at 545.

¹⁹Dandridge v. Williams, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491, 502 (1970); See also Martin v. Lessee of Waddell, 41 U.S. 367, 16 Pet. 367, 367-369, 10 L.Ed 997 (1842).

- C. THE PROPERTY CLAUSE

When Congress manages federal property, its authority comes from the Art. IV, §3 cl.2. (property clause) to the U.S. Constitution.²⁰ The federal government claims in this action that because the property clause gives Congress the power to make "needful rules" and "regulations" respecting federal lands, then (a) any action taken by Congress by virtue of that Clause with respect to federal lands is valid, (b) Congress has unlimited power over the administration of public lands, and (c) normal constitutional constraints are not effective against such rules. Hence, they claim, Congress can, by virtue of the property clause, grant the Secretary of the Department of the Interior the power to allocate wildlife harvest on federal public lands in Alaska and to allocate fish harvest in certain (if not all) of Alaska's navigable waters simply by passing an act authorizing those actions.

A similar argument was presented to the U.S. Supreme Court in Kansas v. Colorado,²¹ but held untenable. The Court held that the Tenth Amendment constrains Congress, even when Congress acts under the property clause.²² Furthermore, Congress cannot act outside the enumerated powers granted by Article I, Section 8 of the United States Constitution. Therefore, since fish and

²⁰U.S. Constitution, Art. IV, §3 cl.2. It reads: The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

²¹206 U.S. 46, 27 S.Ct. 655, 51 L.Ed 956 (1907).

²²Id., 206 U.S. at 90.

wildlife are not federal property²³ and the navigable waters are not federal property, the property clause cannot authorize a federal takeover of the management of Alaska's fisheries or wild game.

The property clause very clearly bans any action prejudicing the rights or claims of any individual state. The Tenth Amendment clearly reserves to the people those powers not granted to Congress. It is settled law that, when it comes to internal affairs, the states retained their police power.²⁴

Amici contend that management and regulation of fish and wild game is a universally recognized police power belonging to the states. The "rural" allocation scheme now demanded by the federal government utilizing ANILCA violates Alaska's broad trustee powers and police powers over its wild animals on federal lands within state boundaries. The State of Alaska, not the federal government, has trust title to and regulates the harvest of wild animals on federal lands within its boundaries. Moreover, Title VIII of ANILCA violates both the federal government's and Alaska's traditional trustee duties over the common property fish, wildlife and water resources by discriminating in favor of one group of citizens based on where they live.²⁵ Therefore, any police power over a state's

²³ The rule of law which all American courts have recognized is that wild game are owned, to the fullest extent that any wild animal may be owned, by the states in their sovereign capacity as the representatives and for the benefit of all their people in common. See United States v. Shauver, 214 F. 154 (1914); State v. Hume, 52 Or. 1, 5, 95 P. 808, 810 (1908).

²⁴ Kleppe, 426 U.S. 529, 96 S.Ct. 2285, 49 L.Ed.2d 34 (1986).

²⁵ United Building Trade v. Camden New Jersey, 465 U.S. 208, 104 S.Ct. 1020, 79 L.Ed.2d 249, 252-253 (1984) (The New Jersey Supreme Court declined to apply the privileges and Immunities Clause in the context of a municipal ordinance that had identical effects upon out-of-state citizens and New Jersey citizens not residing in the locality. The Supreme Court of New Jersey further rejected appellant's privileges and immunities attack on the ground that the ordinance discriminated on the basis of municipal, not state, residency. The U.S. Supreme Court conclude that the challenged ordinance is properly subject to the structures of the Privileges and Immunities

internal affairs belongs solely to the state.

D. THE FOURTEENTH AMENDMENT

The Fourteenth Amendment to the U.S. Constitution guarantees life, liberty and property to each citizen of the United States and should be interpreted as embracing every right that may be brought within judicial cognizance. Therefore, no right of that kind can be taken without due process of law.²⁶ Property, within the meaning of the Fourteenth Amendment, is more than mere ownership, and includes right to acquire, use, enjoy, and dispose of acquisitions subject only to the law of the land.²⁷ *Amici* contend that the Fourteenth Amendment is being violated in the current push to amend Alaska's Constitution to allow for a rural preference and to take guaranteed, constitutionally protected rights from Alaskan citizens without due process of law.

The U.S. Supreme Court's decision in Romer v. Evans²⁸ addresses the constitutional guarantee of equal protection. This decision recites the historical arguments made to protect the Fourteenth Amendment against a vote by the majority to infringe upon a citizens fundamental constitutional rights. The Supreme Court's decision ruled a constitutional amendment was unconstitutional because it identified persons by a single trait then denied them protection across the board. Previously in two separated decisions the Colorado Supreme Court had also found that the

Clause.)

²⁶Taylor v. Beacham, 178 U.S. 548, 20 S.Ct 890, 44 L.Ed 1187 (1900).

²⁷Evans v. City of Chicago, 689 F.2d 1286, 1297 (7th Cir. (Ill.) 1989).

²⁸Romer v. Evans, 517 U.S. 620, 116 S.Ct. 1620, 134 L.Ed.2d 855, 865-867 (1996).

state constitutional amendment was violative of the Fourteenth Amendment.

One's right to life, liberty and property ... and other fundamental rights may not be submitted to a vote; they depend on the outcome of no election.²⁹

The Court stated, ... neither majorities nor minorities can be trusted to define the proper spheres of democratic authority and individual liberty. To place that power in one or the other would visit either tyranny by the majority or tyranny by the minority. Where the words of the Constitution are unambiguous, we need look no further.³⁰ (*emphasis added*).

The Fourteenth Amendment to the U.S. Constitution, and the common use and equal protection clauses of the Alaska Constitution are unambiguous. Therefore, *Amici* contend that if the State of Alaska succumbs to the pressures of the federal government and submits a constitutional amendment to popular vote, the amendment would be null and void because fundamental rights may not be submitted to a vote.

E. STATUTE OF LIMITATIONS

The federal government has consistently argued with varying degrees of success that a challenge to Title VIII of ANILCA is barred by the six-year statute of limitations. However, in McDowell v. United States,³¹ the U.S. District Court held that plaintiff's claims were not barred by the statute of limitations because, contrary to the government's argument that plaintiffs were attacking the constitutionality of the legislation itself, the plaintiffs were seeking declaratory and injunctive relief against the future application of ANILCA. The court stated as

²⁹ Evans v. Romer, 854 P.2d 1270, 1286 (Colo. 1993).

³⁰ Romer v. Evans, 882 P.2d 1335, 1351-1352 (Colo. 1994).

³¹ McDowell v. United States of America (McDowell II), Case No. A92-531 Cv (D.Alaska 1992).

follows:

The urban/rural distinction challenged by the plaintiffs applies on a continuing basis, and thus arguably presents an ongoing violation of plaintiffs' constitutional rights. No single event has occurred that would trigger the operation of 2401(a).³² Moreover, because the State of Alaska enacted and implemented a complying subsistence law of its own as authorized by 16 U.S.C. §3115(d), Title VIII of ANILCA was superseded by the Alaska subsistence law. In the words of the Ninth Circuit Court of Appeals, Title VIII of ANILCA was "stayed" and "federal regulations...withheld."³³

The instant appeal challenges the future application of ANILCA and the proposed federal takeover. Therefore, *Amici* firmly believe that to dismiss the present case on the technical ground that the statute of limitations has run, without an examination of the merits, disregards the ambiguities of ANILCA. Furthermore, it leaves unaddressed the constitutional challenges that Title VIII of ANILCA violates the equal footing doctrine, the privileges and immunities clause of the United States Constitution, the equal protection clause, due process, and the state police powers. It also does injustice to the policy consideration that one does not lose their individual constitutional rights either by the failure of technicalities nor are they subject to majority vote.³⁴

II. THE REQUIREMENTS AND IMPLICATIONS OF THE PUBLIC TRUST DOCTRINE ARE INTEGRAL TO RESOLVING THE CONFLICT BETWEEN THE FEDERAL GOVERNMENT AND ALASKA.

A. PUBLIC TRUST DOCTRINE

The Alaska Supreme Court has embraced the Public Trust Doctrine in its

³² 28 U.S.C. § 2407(a) reads in part: (a) Except as provided by the Contract Disputes Act of 1978, every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues.

³³ *Kenaitze Indian Tribe v. State of Alaska*, 860 F.2d 312, 314-316 (9th Cir. 1988), cert. denied, 491 U.S. 905 (1989).

³⁴ *Evans v. Romer*, 854 P.2d at 1271.

recognition of the state's constitutional mandate of equitable common use of the state's renewable fish, wildlife and water resources.³⁵

The Public Trust Doctrine provides that public trust lands, waters and living resources in a state are held by the state in trust for the benefit of all of the people. It establishes the right of the public to fully utilize public trust lands, waters and living resources for a wide variety of recognized public uses. This doctrine has been used and upheld by the United States Supreme Court, the lower federal courts and state courts since the earliest days of this nation.³⁶

The "trust" referred to is an actual trust in the legal sense. The trust assets are generally in the form of navigable waters, the lands beneath and the living resources within those waters, and free roaming wildlife. The beneficiaries are the public, which includes "not just present generations but those to come."³⁷ The trustees are the state legislatures or, in some limited circumstances, the United States Congress. The trustees have an absolute duty that cannot be abrogated to protect the trust. The purpose of the trust is clear; i.e., to preserve and continuously assure the public's ability to fully use and enjoy public trust lands, waters and resources for authorized public uses.

³⁵ Owsichek v. Alaska, 763 P.2d 488 (Alaska 1988) (The Alaska Supreme Court referenced "common use" and "public trust" over twenty times).

³⁶ "The right of fishery in tidal waters is a public right, common to all. It cannot, therefore be exclusive in any individual and prescription. See Illinois Central Railroad v. Illinois, 146 U.S. 387, 13 S.Ct. 110, 36 L.Ed. 1018 (1892).

³⁷ Arizona Center for Law in the Public Interest v. Hassell, 837 P.2d 158, 169 (Ariz. App. 1991).

B. SUBMERGED LANDS ACT

The Submerged Lands Act³⁸ is a codification of the Public Trust Doctrine, which historically applied to the fish, wildlife and water resources and created a common property for the public as a whole. As such, these common property resources do not depend upon the whims of either the executive or the legislative branches of federal or state governments. These two branches are bound by the common interest of all people and can not abrogate that interest or responsibility.

The Submerged Lands Act is a quitclaim of federal authority or ownership and provides that, like all other states, Alaska owns its navigable waters, submerged lands and the fish that swim in those waters. It also provides that management of those resources is subject to state (not federal) law. The Act gave all states servitude title in trust and management authority of the natural resources within their borders. The Act also specifically included fish as well as other marine animals and plant life in all the navigable waters therein.

The U.S. District Court's decision in State of Alaska v. United States (Gulkana)³⁹ repeatedly refers to the state's sovereign rights and supports the established doctrine that these navigable waters and the Submerged Lands Act give Alaska title to the estimated 30 million acres of submerged lands and 100,000 to 187,000 miles of rivers and resources therein.

"Where a river is navigable ... at the time of statehood, title to the river bed was owned by the federal government, [and] upon the state's admission to the

³⁸43 U.S.C. §§1301-1311.

³⁹662 F.Supp 455 (D.Alaska 1987)

Union, title to the river beds was transferred to the state."⁴⁰ In Oregon State Land Board v. Corvallis Sand and Gravel,⁴¹ the United States Supreme Court held that upon admission to the Union, a state's title to lands underlying navigable waters within its boundaries is conferred, not by Congress, but by the Constitution itself, and the title thus acquired by the state is absolute so far as any federal principle of land title is concerned.⁴² The court further held that lands once having passed from the federal government to the states are then subject to the laws of that state in which it lies.⁴³

The Submerged Lands Act unequivocally provides that title to the fish in Alaska's navigable waters belongs to the State of Alaska.⁴⁴ In United States v. State of California,⁴⁵ the U.S. Supreme Court held that "when Congress enacted the Submerged Lands Act of 1953 ... the United States, in effect, quitclaimed ... whatever interest the federal government may have had in, and to all lands and natural resources lying within three geographical miles seaward of the ... coastline."⁴⁶

⁴⁰Montana Coalition for Stream Access v. Curran, 682 P.2d 163, 167-168 (Montana 1984) (The Public Trust Doctrine responsibility of the state can never be abrogated.)

⁴¹ 429 U.S. 363, 97 S.Ct. 582, 50 L.Ed.2d 550, 553 (1977).

⁴² Id. 50 L.Ed.2d at 553.

⁴³ Id.

⁴⁴United States v. Alaska, 521 U.S. 1, 117 S.Ct. 1888, 138 L.Ed.2d 231 (1997).

⁴⁵ 447 U.S. 1, 100 S.Ct. 1994, 64 L.Ed.2d 681 (1980).

⁴⁶Id. 447 U.S. at 3.

So there would be no confusion about Alaska being a beneficiary of the Submerged Lands Act, Section 6(m) of the Alaska Statehood Act clearly provided that the Act "shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder." The Alaska Statehood Act, anticipated and provided that the United States would transfer administration, jurisdiction and management of fish and game to the State of Alaska equal to that possessed by other states.

Executive Order No. 10857 (December 29, 1959) accomplished that transfer and terminated federal management of fish and wildlife in Alaska effective December 31, 1979. As discussed supra, this Order also affirmatively quitclaimed all fish and wild game to the State of Alaska.

As an essential element of sovereignty and by quitclaim from the federal government, title to fish and wild game in Alaska rests in the sovereign State of Alaska in its trustee capacity for all its people. Although it may have authority to "protect" wildlife resources found on federal trust property, since statehood the federal government has had no authority to make any rule or regulation allocating fish and wild game which belong in common to the citizens and are held in trust by the State of Alaska.

III. IT IS VITAL THAT THE COURT RECOGNIZE THE DISTINCTION BETWEEN "USE" AND "USER".

With respect to any analysis of the issues raised relative to this appeal, understanding of the difference between uses and users is crucial. Fish and wildlife may be managed for preferences among uses, but equal protection mandates an equality among the users of such uses. Federal public lands are reserved for specific purposes (uses). For example, the Kenai National Wildlife Refuge's primary purposes are managed for fish, wildlife and recreation (uses), but these

resources must be available for taking on the basis of equal consideration among all people using those resources (users). Public land ownership, whether state or federal, sets up the purposes (or uses) for which those lands are reserved. After beneficial uses are selected, the state can then utilize its police powers to regulate the users, or the beneficiaries, of the common public trust property (fish, wildlife and water resources) on both federal and state land.

If one looks to ANILCA for a clear understanding of the term rural residency, the nearest attempt at a definition is the phrase "customary and traditional." Unfortunately, the terms within that phrase, i.e., "custom" and "traditions" have been defined either broadly or narrowly depending upon the various perspectives of the courts which have done so. Their struggle with this ambiguous phrase is reflected in the Alaska Supreme Court's statement: "Despite repeated legal challenges to and multiple revisions of the subsistence laws, 'subsistence uses' have long been defined in terms of 'customary and traditional uses'; accordingly, we consistently have interpreted customary and traditional to refer to 'uses' rather than 'users'."⁴⁷

Kleppe v. State of New Mexico,⁴⁸ is often cited by proponents of federal management over what was traditionally managed under state police power. However, this decision, in fact, recognizes the Secretary of the Interior's responsibility to decide preferences among resource uses that are compatible with the purpose for which they were reserved. But the decision neither implicitly nor explicitly attempts to establish a preference of users for those uses. No effort was

⁴⁷ Payton v. Alaska, 938 P.2d 1036, 1042 (Alaska 1997). (The Supreme Court did not remand this case to the Superior Court, but instead ordered the Board of Fisheries to grant the Paytons their right to participate as equal users in the subsistence fisheries.)

⁴⁸ Kleppe, 426 U.S. 529, 96 S.Ct. 2285, 49 L.Ed.2d 34 (1986).

made by the Supreme Court to designate any preference of users for the identified uses whatsoever. However, the Court's decision is repeatedly cited for just such a proposition. Accordingly, Kleppe and the 9th Circuit's decision in Alaska v. Babbitt (Katie John)⁴⁹ are illustrative of what occurs when the distinctions between use and user are confused.

It is important to note that in the 9th Circuit's confusion in the Katie John⁵⁰ decision between "use" and "user" created an entirely new doctrine. For the first time a court ruled that reserved water rights on federal public lands unilaterally entitled the federal government (not the state) to manage fishing and hunting on such lands in Alaska for purposes of Title VIII of ANILCA.⁵¹ The 9th Circuit erroneously concluded that "reserved water rights" extends federal jurisdiction over navigable waters above and beyond the government's traditional and constitutional authority to regulate commerce and transportation. This decision changed the long established rule that reserved water rights did not carry with them any federal management authority over fishing and hunting in navigable waters on federal public lands. Unfortunately, rulings after the 9th Circuit's decision have allowed the federal government to further expand its claim to management authority over fish and wildlife outside of federal lands due to their migration through such lands.

⁴⁹1994 WL 487830. The Katie John v. United States litigation was consolidated in the U.S. District Court, District of Alaska with the litigation in Alaska v. Babbitt (The latter being ultimately decided by the 9th Circuit at 72 F.3d 698 (9th Cir. 1995)).

⁵⁰Alaska v. Babbitt, 72 F.3d 698 (9th Cir. 1995) and Katie John v. United States, 1994 WL 487830, were consolidated before Judge Russell Holland in the District of Alaska.

⁵¹In being self-critical of their own position, the 9th Circuit in Katie John stated, "We recognize that our holding may be inherently unsatisfactory. By holding that public lands include some specific navigable waters as a result of reserved water rights, we impose an extraordinary administrative burden on federal agencies."

Taken to its logical conclusion, under this theory the federal government could claim management authority over all anadromous fish since they pass through federal waters beyond the state's three mile limit.⁵²

This is the first time in this country's history that such a doctrine has been recognized. And its application impinges on Alaska's title and management authority recognized under both the Public Trust Doctrine and the Submerged Lands Act. Essentially, application of this doctrine strips Alaska of all pretense of equal footing status as is guaranteed to the other 49 states.

CONCLUSION

Amici agree without question that Congress has the complete power and authority to manage federal lands. But the issue before this court is not about "land management." It is about the illegal allocation of Alaskan public trust assets (fish and wild game) to a select portion of Alaska's citizens to the exclusion of others - based solely on where they live.

Neither Congress nor the Alaska State Legislature can allocate fish or wild game or any other trust asset to any one class or portion of its citizens to the exclusion of others. The concept of impartiality is embodied in both the Alaska and United States Constitutions. It is that concept which has been violated for over twenty years by Title VIII of ANILCA.

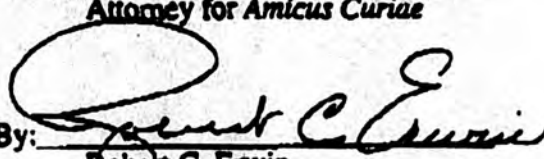
Amici have submitted this brief in an effort to address the merits of Alaska's Constitutional dilemma and the politically motivated pressure exerted by Congress and self-interested Alaskans to amend its Constitution. These groups continue to call for a vote which will essentially cause the citizens of Alaska to surrender their fundamental equal rights protection.

⁵²*Id.* (*Amici* argue that the language relied upon by the 9th Circuit speaks only to the management of "uses" not "users.")

In reaching a decision in this appeal, this court must accept its responsibility to settle the conflicting decisions by the Alaska Supreme Court and the 9th Circuit Court of Appeals.⁵³ Such a decision should conclude that the State of Alaska has sovereign servitude authority regarding the taking of its common property fish and wildlife public trust resources, as well as equal footing rights under the Submerged Lands Act and the Alaska Statehood Act.

LAW OFFICE OF ROBERT C. ERWIN
Attorney for Amicus Curiae

DATED: Dec 18, 1998

By: 

Robert C. Erwin
4041 B Street, Suite 201
Anchorage, Alaska 99503
Ph: (907) 561-6985
Ak Bar Association # 6101004

⁵³Alaska v. Babbitt (Katie John), 75 F.3d 698 (9th Cir. 1995) and Totemoff v. State, 866 P.2d 125 (Alaska 1993).

I HEREBY CERTIFY THAT ON THIS 19th day of December, 1998, I caused to be served a true and correct copy of the foregoing instruments by DHL Worldwide Express on:

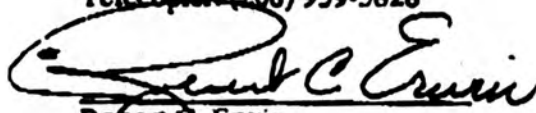
Clerk of Court, Civil Division
United State Court of Appeals
For the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Ave. N.W.
Washington, D.C. 20002-2866
Phone: (202) 216-7000

and by U.S. Mail on:

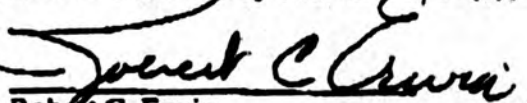
Civil Process Clerk
Office of the U.S. Attorney
555 4th Street, N.W.
Washington, D.C. 20001

Robin W. Grover
Michael, Best & Friedrich
77 West Wascker Drive, Suite 4300
Chicago, IL 60601-1635
Phone: (312) 845-5800
Telecopier: (312) 845-5828

Mark L. Pollot
12516 West Engleman Drive
Boise, Idaho 83713
Phone: (208) 939-1081
Telecopier: (208) 939-5828


Robert C. Erwin

I HEREBY CERTIFY THAT the brief of ~~Amicus Curiae~~ does not exceed the number of words allowed by Fed. Cir. R. 28(d)(1).


Robert C. Erwin

RESUME**VIRGIL L. UMPHENOUR****2400 Davis road****Fairbanks, Alaska 99701****(907) 456-3885****FAX 456-3889****E mail akhunt@ptialaska.net****OBJECTIVE**

Appointment to the Alaska Board of Fish.

QUALIFYING EXPERIENCE

Have been involved in all aspects of the fishing industry: commercial, sport, subsistence.

Commercial

Fished commercially on the Tanana River in Fairbanks from 1984 until 1995 when I gave my permit to my son. In 1985 became a commercial fish processor, processing both fish and roe from my fish and buying from commercial fishermen in Fairbanks, Nenana, Norton Sound and villages along the Yukon River. Have expanded this business so that now my company operates year round doing smoked fish and value added salmon products per year. Upwards of 250,000 lbs of salmon and roe can be processed during the summer months pending availability of fish.

SPORT

Have been an avid sport fisherman all my life. I have sport fished from the Kenai Peninsula to the Seward Peninsula and am well aware of the importance of the sport fishing industry to both the Alaskan sport fisherman and the tourism industry. My company processes in excess of 40,000 lbs/yr of sport caught fish.

SUBSISTENCE/PERSONAL USE

Have subsistence or personal use fished in Nome, Copper River and Yukon River drainage since 1976. As a commercial fish processor and big game hunting guide, have dealt extensively with the commercial/subsistence fishermen of the Yukon River drainage and Norton Sound. For the most part, fishermen in these areas commercial fish to obtain cash to support their subsistence lifestyle. I have seen first hand the devastating effects of the failed fish runs on these people.

HUMAN RELATIONS

Past and present positions have required a wide range of interpersonal skills, public information management techniques and political awareness. As a commercial fisherman/processor and former military officer, have learned to deal with a wide range of individuals and be cognizant of their special interests and concerns. Am able to work with others to strike a consensus on critical issues. Was co-organizer of the Yukon River

together.

COMMUNICATION

Certified military instructor. Am completely at ease when speaking to large groups of people.

EMPLOYMENT HISTORY

CEO, Interior Alaska Fish Processors, Inc.
Registered Alaskan Hunting Guide
Officer, US Army Reserve, Retired

MEMBERSHIP

Member, Alaska Board Of Fish, August 1994 to present
Delegate, US Canada Yukon River Salmon Treaty Negotiating Committee since 1988
Co Chairman, Yukon River Drainage Fishermen's Association, Dec 1990 to July 1994
Tanana Valley Sportsmen's Association, life member

REFERENCES

Jack Coghill, former Lt. Governor
State Senator Georgianna Lincoln
State Representative Richard Foster
Irene Nicholia, former State Representative
Allan Vezey, former State Representative
Charles Meecham, former Deputy Commissioner, ADF&G

Bill Hudson, Chair
Alaska House of Representatives
Select Committee on Fisheries

Sitka, AK
April 19, 1999

Dear Chairman Hudson,

My name is Eric Jordan. I am a lifelong Alaskan fisherman. I have served 15 years on the Sitka Fish & Game Advisory Committee, 8 as secretary and 4 as chair. I served 8 years on the Advisory Panel to the North Pacific Fisheries Management Council. My grandfather, father, and sons have or presently commercially fish in Alaska. I troll salmon, work as a charter operator, and subsistence fish and hunt to sustain myself. I am a current member of the Sustainable Fisheries Committee advising the Board OF Fisheries.

I am here representing myself.

I have worked with and testified to Boards of Fisheries since 1973. I have worked closely with this board. I have found this board and the individual members commitment to public process and fact finding unparalleled. I have participated in the Board sub-committee process and support it. I find that it compliments and amplifies the advisory committee process.

I support the Governor's nominations and urge you to confirm all these incumbents, Grant Miller, Dan Coffey, and Virgil Umpenour. This is one of the best, hardest working Board OF Fisheries in a legacy of fine Alaskan fisheries boards. Service on the Board OF Fisheries takes a great deal of work and dedication. Alaska is fortunate that these dedicated, experienced members are willing to serve again. I urge unanimous support from the legislature.

Sincerely,



Eric Jordan
F/V I Gotta
103 Gibson Place
Sitka, AK 99835
(907) 747-6743

TO: Board of Fish Confirmation Committee Members

From: Edwin Welles & Elizabeth Hagerman, Cook Inlet Drift Permit #64714G

Re: Reject Dan Coffey, Grant Miller, and Virgil Umphenour

We strongly urge you to reject Dan Coffey, Grant Miller and Virgil Umphenour as board members. The Kenai river Sockeye allotment is already contentious. These individuals will arrive on the board with no intention of finding a rational solution. They will inflame the conflict between the commercial and sports fishing interests with their emotionally entrenched biases.

To: House Fisheries Committee
Kenai Legislative Affairs office

Re: Appointments of Don Coffey, Grant
Miller and Virgil Openhouse (or?)

It is our understanding that these three men are not pro-commercial fishing. We have 2 Cook Inlet permits so have a vested interest in the Cook Inlet area. We are deeply concerned that this committee would elect people who are not entirely concerned about the fisheries and the welfare of the fisherman. We would hope you reconsider your choices.

Dick & Sandy Yraskoff
5731 Faust Rd
Ellensburg, WA. 98926

(509) 925-4947

10 May 99

Representative Hudson,

The Kvichak Setnetters' Association fully supports the reconfirmation of Dan Coffey, Grant Miller and Virgil Umphenour. They have shown the ability to make difficult decisions of volatile issues. In 1998, at the Bristol Bay cycle meeting, they brought drift and setnet fisherman together on issues. That was no easy feat.

These Board members listen to the stakeholders, weigh issue in regards the fish stocks' overall needs for survival and make intelligent decisions. Issues are looked at from all angles by these three because their different personalities. It's a good mix.

Al Bauman
president
Kvichak Setnetters' Association

MAY 03 1999

Introduced by: Scalzi, Brown, Drathman
Date: 04/20/99
Action: Adopted as Amended
Vote: 7 Yes, 1 No, 1 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 99-034
(Popp) Substitute**

**A RESOLUTION STRONGLY OPPOSING THE CONFIRMATION OF
CERTAIN MEMBERS TO THE ALASKA BOARD OF FISHERIES**

- WHEREAS,** the Kenai Peninsula Borough Assembly disagrees with certain stands taken by the Alaska Board of Fisheries; and
- WHEREAS,** the board of fish has circumvented local advisory boards and addressed Cook Inlet issues each and every year out of cycle; and
- WHEREAS,** the board of fish was instrumental in dismantling the Upper Cook Inlet Management Plan; and
- WHEREAS,** the Alaska Board of Fisheries members did not use their own guidelines regarding local economies and historical users in their decision making process; and
- WHEREAS,** the board of fish dramatically changed the escapement goals for sockeye, utilizing a sliding scale approach which may cause great damage to the Kenai River Habitat area; and
- WHEREAS,** the regulations and decisions made by the board of fish have resulted in lost opportunity and income to Cook Inlet commercial fishing families and associated local support industries; and
- WHEREAS,** it is in the best interest of the Kenai Peninsula Borough, Cook Inlet commercial fishing families and businesses to deny confirmation of all current members reappointed to the Alaska Board of Fisheries;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

MAY 03 1999

**COPPER RIVER-PRINCE WILLIAM SOUND
NATIVE FISHERMEN'S ASSOCIATION
P.O. BOX 1388, CORDOVA, ALASKA 99574
TEL-907-424-7738 FAX-907-424-7739**

May 3, 1999

May 3, 1999

Representative Bill Hudson, Chair
House Special Committee on Fisheries
State Capitol
MS 3100
Juneau, AK 99801-1182

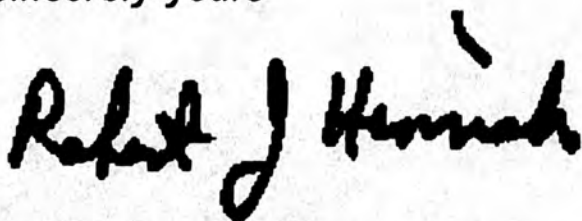
Chairman Hudson

The Copper River/Prince William Sound Native Fishermen's Association (CR/PWSNFA) is made up of Native Fishermen who have a history of fishing the Copper River/Prince William Sound area for the past 10,000 years.

CR/PWSNFA opposes the reappointment of Virgil Umphenour to the Board of Fish. After reading Mr. Umphenour's recent statements at the conformation hearings, we don't believe he is capable of examining all the fisheries issues with an open mind.

Thank you for your consideration on this issue.

Sincerely yours



Robert J. Henrichs
President
Copper River/Prince William Sound
Native Fishermen's Association

CORRECTION

**THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION**



Rev. 6/98

Central Microfilm Services
Department of Education & Early Development
State of Alaska

MAY 03 1999

Introduced by: Scalzi, Brown, Drathman
Date: 04/20/99
Action: Adopted as Amended
Vote: 7 Yes, 1 No, 1 Absent

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- WHEREAS,** the regulations and decisions made by the board of fish have resulted in lost opportunity and income to Cook Inlet commercial fishing families and associated local support industries; and
- WHEREAS,** it is in the best interest of the Kenai Peninsula Borough, Cook Inlet commercial fishing families and businesses to deny confirmation of all current members reappointed to the Alaska Board of Fisheries;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Kenai Peninsula Borough supports the wishes of the Cook Inlet commercial fishing families and businesses and strongly opposes the confirmation of the three current members reappointed to the Alaska Board of Fisheries, who are Dan K. Coffey, Virgil L. Umphenour and Grant Miller.

SECTION 2. The Kenai Peninsula Borough takes the position that two commercial fishermen should be appointed to the Alaska Board of Fisheries who have knowledge in large fisheries such as Cook Inlet, and that one of the appointees be a Cook Inlet commercial fisherman.

SECTION 3. That copies of this resolution shall be forwarded to Governor Knowles, the Alaska Legislature, Alaska Board of Fisheries, Commissioner of Fish and Game, and Commissioner of the Department of Natural Resources.

SECTION 4. That this resolution shall take effect immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 20TH DAY OF APRIL 1999.


Ronald Wm. Drathman, Assembly President

ATTEST:


Linda S. Murphy, Borough Clerk



MAY 03 1999

**COPPER RIVER-PRINCE WILLIAM SOUND
NATIVE FISHERMEN'S ASSOCIATION
P.O. BOX 1388, CORDOVA, ALASKA 99574
TEL-907-424-7738 FAX-907-424-7739**

May 3, 1999

May 3, 1999

Representative Bill Hudson, Chair
House Special Committee on Fisheries
State Capitol
MS 3100
Juneau, AK 99801-1182

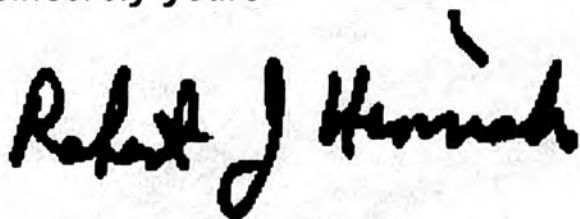
Chairman Hudson

The Copper River/Prince William Sound Native Fishermen's Association (CR/PWSNFA) is made up of Native Fishermen who have a history of fishing the Copper River/Prince William Sound area for the past 10,000 years.

CR/PWSNFA opposes the reappointment of Virgil Umphenour to the Board of Fish. After reading Mr. Umphenour's recent statements at the conformation hearings, we don't believe he is capable of examining all the fisheries issues with an open mind.

Thank you for your consideration on this issue.

Sincerely yours



Robert J. Henrichs
President
Copper River/Prince William Sound
Native Fishermen's Association

MAY 03 1999

NATIVE VILLAGE OF EYAK

P.O. BOX 1388, CORDOVA, ALASKA 99574

TEL-907-424-7738/FAX-907-424-7739

May 3, 1999

Representative Bill Hudson, Chair
House Special Committee on Fisheries
State Capitol
MS 3100
Juneau, AK 99801-1182

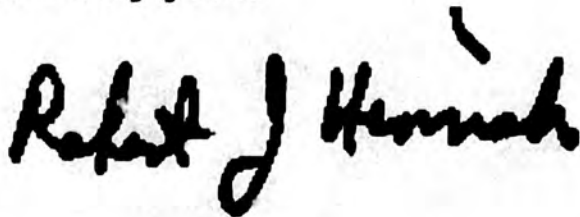
Chairman Hudson

The Native Village of Eyak, with over 500 members, is the largest Tribe on the Copper River and Prince William Sound. Our members have been involved in fishing for the past 10,000 years.

Our Tribe opposes the reappointment of Virgil Umphenour to the Board of Fish. We don't believe Mr. Umphenour is able to examine all the fisheries issues with an open mind.

Thank you for your consideration on this issue.

Sincerely yours



Robert J. Henrichs
President
Native Village of Eyak
Traditional Council

We need to send this message out to each and every Assembly member.

My name is John J. Williams and I live at Kenai Ak.
I have lived in Alaska for 37 years and I am
in support of the commercial fishing industry in the State of
Alaska.

I have requested that the Kenai Borough assist commercial fishers in retaining their historical fishing businesses. Their livelihoods have been severely damaged by the present day Alaska Fish Board. I'm not happy with the current board of fish members

- Dan K. Coffey
- Virgil L. Umphenour
- Grant Miller

Because of creating undo hardships on these commercial fishers and their families who live in the Kenai Peninsula all year long.

The Mat-Su Borough has allocated money to various groups to travel to the Fish Board hearings in Soldotna. These groups have been successful in taking away a large portion of their income. This results in tax dollars being taken away from the local coffers.

Please support their efforts in maintaining their businesses on the Kenai Peninsula and please help them in retaining their historical way of life and livelihood.

I am asking that you support the lawsuit that Joseph A. Malatesta Sr. described to you at your Borough Assembly meeting, any way that you can.

Thank you,

occupation

John J. Williams
Mayor City of Kenai



Alaska State Legislature

Please enter into the record my testimony to the House & Senate Fisheries
committee name

committee on BOF Confirmation, dated 4-28-99
bill # / subject

Please enter into record my testimony to the House and Senate Fisheries Committees.

On BOF Confirmation Hearings, 1999

This letter is in strong support of the present Board of Fish and the reappointment of Dan Coffey, Virgil Umphenour and Grant Miller to this board for another term.

This Board is innovative and places the resource first as their sustainable fish study indicates. In addition, they have initiated the committee process that requires stakeholders to sit down together to discuss issues. This avoids much of the posturing and positioning and helps reach consensus on at least some issues. The Local Advisory Board is a sham as local commercial fishermen load the election meeting and elect only people that support their cause. Even so, this BOF has weighed all testimony and given all user groups fair consideration.

Please don't let us return to the days of a BOF made up of only commercial fishing interests. Mr Coffey, Mr. Umphenour and Mr. Miller are fair minded and not afraid to make change and decisions.

Ron Rainey, Chairman
Cook Inlet Public Fisheries Council

Signed:

Ron Rainey
Testifier

Cook Inlet Public Fisheries Council
Representing (Optional)

P.O. Box 549 Soldotna, Ak 99699
Address

(907) 283-3375
Phone number

April 26, 1999

State of Alaska
House of Representatives
House Fisheries Committee
Rep. Bill Hudson, Chair

Re: Board of Fisheries--Confirmation hearings

Members of the Committee:

I strongly disagree with Virgil Umphenhour's reappointment to the Board of Fisheries, based on the following concerns. The responsibility of being a Board member, requires that each member informs themselves with all related facts concerning each user group in all areas of the state. After all facts are presented, each board member is supposed to make an unbiased, and informed vote. Each member should vote on facts not hearsay. Mr. Umphenhour has proven by his comments during his term on the board, that he clearly has a bias towards commercial fishermen and hatcheries, not only in Prince William Sound, but statewide. Statements he has made include:

"The Copper river fishermen use their gillnets as beach seines." This statement is false, we fish drift gillnets, meaning we lay them out in a straight line, then drift with the current. The current in the Copper river delta runs anywhere from one to fifteen miles per hour.

He quoted that the Copper river is "ten feet deep" and that we "fishermen like to kill every last fish". These are also false statements. Commercial fishermen on the Copper river, fish waters anywhere from 3 to 300 feet deep. Channels inside the barrier islands (our historic fishing grounds) can be anywhere from 80 to 100 feet deep, it is a delta, to say its all "ten feet deep" is an uninformed statement. If we are stopping all the fish, how can it be that in the last three years, we have had record breaking king and red salmon runs on the Copper river? King salmon return as 3, 4, and 5 year fish. This means that in 93, 94, and 95, the return escapement was large enough to produce record runs in 96, 97, and 98.

Umphenhour states that commercial fishermen have no respect for the resource. The fishermen of Cordova, along with Fish and Game have made, 5, 10, and 15 year plans to build a sustainable resource on the upper Copper river. In the last 10 years, the Copper river fishery has been the bright spot in the states management of fisheries. The king and red catches have been on the increase. The escapement has not only met, but exceeded the Department's goals 7 out of the last 10 years.

Any informed person should be praising the Alaska Department of Fish and Games ability to

April 26, 1999

State of Alaska
House of Representatives
House Fisheries Committee
Rep. Bill Hudson, Chair

Re: Board of Fisheries Confirmation Hearing

Members of the House Fisheries Committee:

After submitting a letter to the House Resource Committee last week, I feel it is of the utmost importance to object to the confirmation of Virgil Umphenhour for another term on the board. Apparently, my letter of truth, set him off and showed his true colors. My letter was as follows:

"I would like to oppose the confirmation of Virgil Umphenhour to the Board of Fisheries. His temper tantrum raised at the 1996 board cycle meeting in Cordova, showed him to be both biased and uninformed. His cussing and false statements in front of the public, put the board into Executive Session. Other members had to calm him down. He clearly has a conflict of interest towards his handling of matters concerning the Prince William Sound Aquaculture Corporation, (PWSAC) and/or matters relating to the Copper river fishery.

During his tantrum he stated that we (Cordova fishermen) were allowed to "seine up" all the fish at the mouth of the river. Purse seining has never been allowed near the Copper river. Also, the "mouth" of the Copper river is about a 60 mile wide delta, with many entrances. Mr. Umphenhour's interest in a processing operation in Fairbanks provides him with biases and personal interests when it comes to dealing with certain areas of the state. Because of his lack of judgement, the state should consider looking elsewhere. I am a resident of District 27, and rely solely on commercial fishing for my livelihood."

Mr. Umphenhour, denied this event occurring in 1996, and further explained his bias to the Committee. I now have record that the board did indeed go into Executive Session. He went on to refer to we Copper River gillnetters as a bunch of people who don't care about the resource. I've fished the Copper river for 31 years, and am an original permit holder. My father fished there for 40 years, and taught me the trade with my own boat when I was 11 years old. I've personally witnessed the fine management of the Alaska Department of Fish and Game. Committee members, I ask you to think about this: Who would care more about the fishery and its well being, than one who depends on feeding a family, a commercial fisherman. We

CORRECTION

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Rev. 6/98

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Any informed person should be praising the Alaska Department of Fish and Games ability to

manage the resource. Instead, Mr. Umphenhour keeps on making damaging and false statements to both board members and the public. This should not continue. After his years on the Board of Fisheries, Mr. Umphenhour should have a better understanding on fisheries within the State of Alaska. Instead he makes false statements which have a lasting effect on both the board and the public's opinion on commercial fishermen in general. **I strongly urge the committee to not reappoint Mr. Umphenhour to the Board of Fisheries, because of his biased and unknowledgeable opinions!**

I have fished the Copper river since 1972 and thank you for the opportunity to have my views heard on this matter.

Sincerely,

Kory Blake
P.O. Box 1706
Palmer, AK 99645

Phone: 376-8325

April 26, 1999

State of Alaska
House of Representatives
House Fisheries Committee
Rep. Bill Hudson, Chair

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During his tantrum he stated that we (Cordova fishermen) were allowed to "seine up" all the fish at the mouth of the river. Purse seining has never been allowed near the Copper river. Also, the "mouth" of the Copper river is about a 60 mile wide delta, with many entrances. Mr. Umphenhour's interest in a processing operation in Fairbanks provides him with biases and personal interests when it comes to dealing with certain areas of the state. Because of his lack of judgement, the state should consider looking elsewhere. I am a resident of District 27, and rely solely on commercial fishing for my livelihood."

Mr. Umphenhour, denied this event occurring in 1996, and further explained his bias to the Committee. I now have record that the board did indeed go into Executive Session. He went on to refer to we Copper River gillnetters as a bunch of people who don't care about the resource. I've fished the Copper river for 31 years, and am an original permit holder. My father fished there for 40 years, and taught me the trade with my own boat when I was 11 years old. I've personally witnessed the fine management of the Alaska Department of Fish and Game. Committee members, I ask you to think about this: Who would care more about the fishery and its well being, than one who depends on feeding a family, a commercial fisherman. We

commercial fishermen have escapement levels to achieve before we go fishing, its always been under strict guidelines and that is just as it should be. The Copper river commercial fishery is over 100 years old and only recently have the upriver reaches become accessible to many users. I don't think its proper to have a biased and unknowledgeable person, making decisions on how the resource should be protected. Mr. Umphenhour is purely allocative and while trying to sound scientific, he forgets, this arena is to be left to properly trained biologists. This man makes accusations towards my user group and makes false claims about genetic diversity on king salmon stocks. I would like to see his credentials to make such statements. These statements have been made to the board as well as the public, damaging our credibility and reputation. One story I didn't relate in my previous letter was when myself and three or four other fishermen were outside of the 1996 meeting in Cordova, with Mr. Umphenhour. He looked out at the massive flock of seagulls in front of us and said: "they used to be thick like that up in Fairbanks, but I think I ended up shootin' them all, now you hardly see 'em." It is the truth I speak, and I have other witnesses to attest to his statements. Conservation does not seem to be his strong point! You'll have to forgive me if I don't put my trust in a man who has such disregard for protected wildlife.

Members of the Committee, please stop and think about the of lack of fairness we are facing while trying to protect our livelihood and our resource. Also please remember, no one cares more about the health of the fishery, than one who stakes their very life on it, the commercial fisherman. **It is wrong for political appointees to think of themselves as biologists. Mr. Umphenhour must be removed from this position, he is very inappropriate.** I am enclosing a transcript of Mr. Umphenhour's comments to House Resources after they read my letter to him.

Thank you for the chance to comment,

Bob Martinson
900 Iroquois Drive
Wasilla, AK 9965

Enclosure

Virgil Umphenour's response to Ramona Barnes' questioning re: Bob Martinson's letter to the House Resources Committee's Alaska Board of Fisheries Confirmation Hearing on Wednesday, April 21, 1999

On PWSAC:

"People in PWSAC don't like me and there is a good reason for it. PWSAC owes the State of Alaska 28 million dollars currently. The Department of Investment has extended their loan with no interest. Their not paying any interest on it. PWSAC, I don't feel, has operated in a responsible manner to production of chum and pink salmon. As high as 97% of the harvest in 1996 of chum salmon harvested in Prince William Sound was hatchery-produced. I feel it is irresponsible to mass produce salmon from hatcheries to the detriment of the wild stocks. The Board is mandated by the Constitution of the State and the Legislature to manage salmon resources in such a manner that the wild stocks take priority over enhanced or hatchery-produced stocks. That's why the people from PWSAC do not care for me because I think they have been producing too many chum salmon and pink salmon, and they have put the wild stocks in Prince William Sound at risk because of that."

On the Cordova 1996 BOF meeting and the Copper River:

"To the best of my memory the Board did not enter into Executive Session in the meeting of December 1996 which was conducted in Cordova. So I don't know what they are talking about as far as the Board going into Executive Session. I do know that some of the driftnet fishermen fish inside the barrier islands of the Copper River and the water is 10 feet deep and using drift gillnets that are 29 feet deep. And using them in a manner, in the manner that you would use a beach seine. And they are seining the king salmon out. They're causing a problem with genetic diversity of the king salmon stocks in the Copper River because they kill between 97-100% of king salmon when they're present, knowing when king salmon are getting accustomed to the change from saltwater to freshwater. They spend 7 days to 2 weeks milling in out of the mouth of Copper River. I don't think that is a responsible way to fish, and because I was one of the people that caused that fishery to be restricted a little bit to allow king salmon up the river unmolested, some of the commercial fishermen involved in that practice naturally do not like me and consider me a ? because they don't like responsible fish management. They like to be able to kill every last fish and they don't care if the sport fishery and personal use fishermen and subsistence fishermen get restricted upriver as long as they can catch all they can at the mouth of the river first."

**COPPER RIVER-PRINCE WILLIAM SOUND
NATIVE FISHERMANS ASSOCIATION
P.O. BOX 1388, CORDOVA, ALASKA 99574
TEL-907-424-7738 FAX-907-424-7739**

Representative Bill Hudson, Chair
House Special Committee on Fisheries
State Capitol
MS 3100
Juneau, AK 99801-1182

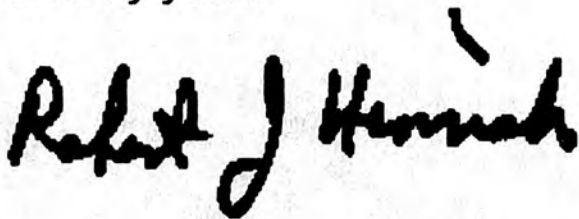
Chairman Hudson

The Native Village of Eyak, with over 500 members, is the largest Tribe on the Copper River and Prince William Sound. Our members have been involved in fishing for the past 10,000 years.

Our Tribe opposes the reappointment of Virgil Umphenour to the Board of Fish. We don't believe Mr. Umphenour is able to examine all the fisheries issues with an open mind.

Thank you for your consideration on this issue.

Sincerely yours

A handwritten signature in black ink, reading "Robert J. Henrichs". The signature is stylized with a large, looped 'R' and a cursive 'J'.

Robert J. Henrichs
President
Native Village of Eyak
Traditional Council



Chugach Regional Resources Commission

May 3, 1999

Chenega Bay

Eyak

Nanwalek

Port Graham

Quetzekak
Native Tribe

Tatitlek

Valdez Native
Tribe

Representative Bill Hudson, Chair
House Special Committee on Fisheries
State Capitol - MS 3100 (Fax 907/465-2273)
Juneau, Alaska 99801-1182

Dear Representative Hudson,

On behalf of the tribes and their members of the Chugach Regional Resources Commission, I am writing to oppose the re-appointment of Virgil Umphenour to the Board of Fisheries. The Chugach Regional Resources Commission is an inter-tribal fisheries and wildlife commission dedicated to assisting the tribes in the Chugach Region to address natural resource issues and concerns and to assist them in developing responsible natural resource management programs.

In reviewing the transcripts of the confirmation hearings in the House Resources Committee on April 21, 1999, it is evident that Mr. Umphenour has demonstrated prejudice toward fish hatcheries, and commercial fishing in general. The people of the Chugach Region depend upon the fisheries for their livelihood, both commercially and for subsistence. Two of the tribes in this region operate hatcheries to the benefit of the resources and the people. The Port Graham Village Council operates a salmon hatchery, providing fish for the communities in Lower Cook Inlet. They have responsibly managed this hatchery to the point that Nanwalek is able to harvest red salmon commercially and the pink salmon returns are at a level where the cannery in Port Graham has reopened.

The Qutekcak Native Tribe in Seward is currently operating a shellfish hatchery to will provide shellfish spat to commercial farmers in Alaska, and is also working to re-establish the clam beds in Port Graham, Nanwalek, and Tatitlek. I would hope that these admirable efforts are recognized by Board of Fish representatives when voting on fish hatchery issues that could effect the livelihoods of the people in this area.

The people of the Chugach Region are dedicated to the sound management of the fisheries resources, and as such, would be better served by placing a representative on the Board of Fisheries who recognizes the positive aspects of fish hatcheries and commercial fishing. I believe it would be in the best interests of the fisheries resources in general to place someone on the Board of Fisheries who is unbiased and willing to fully explore all aspects of any particular issue before taking a position on it.

Thank you for the opportunity to express our concerns. If you have any questions regarding our opposition to the re-appointment of Virgil Umphenour to the Board of Fisheries, please do not hesitate to contact me at 907/562-6647.

Sincerely,


Patty Brown-Schwalenberg
Executive Director

cc: Senator Georgiana Lincoln
Representative Gail Phillips
Representative John Harris
Representative Ethane Berkowitz
Representative Joe Green
Senator Johnny Ellis
Senator Jerry Mackie
CRRC Board of Directors



Alaska State Legislature

Please enter into the record my testimony to the HOUSE FISHERIES
 committee on DAN COFFEY TO committee name
BOARD OF FISHERIES dated MAY 3, 1999
 bill/subject

Dear Chairman Hudson and Committee Members,

I STRONGLY SUPPORT THE REAPPOINTMENT AND CONFIRMATION OF DAN COFFEY TO THE BOARD OF FISHERIES.

As a member of a local advisory committee and a member of the public, I have testified before this Board member and served in the committee process several times recently. While we may not always agree, I feel his positions on issues have been well thought out and in the best interests of Alaska's resources and people. At no time is it possible to satisfy ALL special interests, including mine.

I ask you also to please disregard Kenai Peninsula Borough Resolution 99-034 strongly opposing the confirmation of the three current members. I am appalled and embarrassed that my local government, the Kenai Peninsula Borough Assembly, would blatantly advocate and lobby for a special segment of our local economy to the detriment of other viable and vital parts of our local business sector, let alone the damage this type of thinking does to the public's uses of our common resources.

While conserving habitat and resource, the members of the Board of Fisheries must recognize the needs of subsistence, personal use, sport fishing, commercial sport fishing, and commercial fishing. This board member has worked hard to insure that these needs are met.

Please support the confirmation of the reappointment of Dan Coffey to the Board of Fisheries.

Signed:

W. S. Stockwell
 Testifier

BILL STOCKWELL
 Representing (Optional)

P.O. BOX 721, CAPEE LANDING, AK 99572
 Address

(907) 595-1540
 Phone No.



Lake and Peninsula Borough

P.O. Box 495
King Salmon, Alaska 99613

Telephone: (907) 246-3421
Fax: (907) 246-6602



April 30, 1999

Bill Hudson
Co-Chair of House Resources Committee
Facsimile Message: 465-2273

RE: Alaska Board of Fisheries Reappointment

Dear Representative Hudson,

The Lake & Peninsula Borough has a strong interest in maintaining the health of the fisheries resources adjacent to the fishing communities within Borough boundaries. The Assembly is active in working to minimize bycatch in commercial fisheries and protecting essential habitat for all marine resources within State waters.

We wholeheartedly support the reappointment of Virgil Umphenour because he is not hesitant to address these sensitive issues.

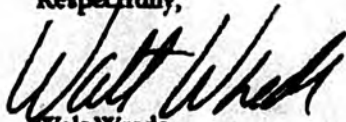
As you know there are different vessel types and sizes that harvest different species within state waters. These differences bring a sharp awareness to fishermen that target the same stocks, intercept stocks, or ruin habitat in areas that others rely on for other species. All this is said because different regions support different appointees to the Alaska Board of Fisheries.

We support Virgil Umphenour because he has stood strong in the face of tough opposition on these tough issues. As Co-Chair of House Resources Committee, we ask you to recognize his unwavering stance in telling the industry to clean up their act. Fishing can be conducted profitably and still reduce bycatch and stop ruining crab habitat.

He also encourages reducing intercept fisheries where possible. Resources within our state are for all of us to use. If fisheries were managed to allow maximum intercept in some areas, our state would lose in the long run because the impact would decimate discrete stocks.

Thank you for considering our recommendation. Virgil takes his appointment seriously and does a good job for the state.

Respectfully,



Walt Wrede,
Borough Manager



Alaska State Legislature

Please enter into the record my testimony to the House Fisheries
committee name
committee on Dan K. Coffey dated 5/3/99
bill # / subject

I oppose the reappointment of Dan K. Coffey to the Board of Fisheries, he has shown his bias against the Cook Inlet commercial fishing industry by his actions during his present term on the Board. A qualified appointee should be an unbiased decisionmaker willing and able to factfind to make the best decision possible based upon the available information.

Signed: Kenneth L. Svetc (Kenneth L. Svetc)
Testifier
(self)
Representing (Optional)
7715 Highland Drive; Anchorage, AK 99518
Address 907-349-6028

WHAT ABOUT CONSERVATION?

L. Hogan

Fisherman's Signatures

If you have been negatively impacted by the Upper Cook Inlet fishery during the 1998 season please sign below.

Print name	Sign	Phone
Robert G. Ross	Robert G. Ross	776-5893
Christopher D. Ross	Christopher D. Ross	776-8110
Wray McLaughlin	Wray McLaughlin	776-8759
John J. McBride	John J. McBride	776-5135
Nick Cathelmer	Nick Cathelmer	776-2100
Jack Montagna	Jack Montagna	776-8570
Ronald A. Wadson	Ronald A. Wadson	776-4057
Clyde Quinn	Clyde Quinn	776-5189
A. Carl Jauriainen	A. Carl Jauriainen	776-8526
DARRIS CRESSLEY	DARRIS CRESSLEY	776-5602
Robert F. Ernst	Robert F. Ernst	776-8650
Robert Monroe	Robert Monroe	776-2140
Leanne King	Leanne King	776-9069
JAMELA R. Lytle	Jamela R. Lytle	776-8992
Mary Pratt	Mary Pratt	776-5828
Carl Liches	Carl Liches	776-5690
MICHAEL FASTER	Michael FASTER	776-8110
ROGER FORSTER	Roger Forster	776-5158
FRED HUDSON	Fred Hudson	776-8479
Keith T. Raham	Keith T. Raham	776-8885
SUSAN JAUARIJAINEN	Susan Jauriainen	776-8867
Kurt L. Melvin	Kurt L. Melvin	776-8788
Tim O'Brien	Tim O'Brien	776-8496
WAYNE NORTON	Wayne Norton	776-8635
GARY KLUGG	Gary Klugg	776-5458
Don A. Butterbrecht	Don A. Butterbrecht	776-8027
Lynnda Stroud	Lynnda Stroud	776-8249
Charles W. McLean	Charles W. McLean	776-2106
ALEXANDER ROSS	Alexander Ross	776-8388
Michael Cole	Michael Cole	6-7696
PAUL JACKSON	Paul Jackson	6-8817
Stuart Meyer	Stuart Meyer	

Attn: Assembly Member
Pete Sprague

We need to send this message out to each and every Borough Assembly member.

My name is Marvin Druseth and I live at Kenai.
I have lived in Alaska for 65 years and I am
in support of the commercial fishing industry in the State of
Alaska.

I am requesting that the Kenai Borough assist me in retaining my historical fishing business. My livelihood has been severely damaged by the present day Alaska Fish Board. The income I make from my business allows me and my family to live here in the Kenai Borough all year long.

The Mat-Su Borough has allocated money to various groups to travel to the Fish Board hearings in Soldotna. These groups have been successful in taking away a large portion of my income. This results in tax dollars being taken away from the local coffers.

Please support my efforts in maintaining my residence on the Kenai Peninsula and please help me in retaining my historical way of life and livelihood.

I am asking that you support the law suit that Joseph A. Malatesta Sr. described to you at your Borough Assembly meeting, any way that you can.

Thank you,

Marvin Druseth

Subject: [Fwd: Board of Fisheries Hearings on Dan Coffey]

Date: Mon, 03 May 1999 15:49:58 -0800

From: Representative Bill Hudson <Representative_Bill_Hudson@legis.state.ak.us>

Organization: Alaska State Legislature

To: Liz_Cabrera@legis.state.ak.us

Subject: Board of Fisheries Hearings on Dan Coffey

Date: Mon, 03 May 1999 10:42:19 -0800

From: susan cutler <scutler@sinbad.net>

To: Representative_Bill_Hudson@legis.state.ak.us

Dear Rep. Hudson,

I just learned that your **Fisheries Subcommittee** will be reviewing the reappointment of **Dan Coffey** to the Board of Fisheries this afternoon. We would like the following entered into the record:

As President of the **Alaska Sportfishing Association**, I would like to advise you and the other members of the committee that we have the upmost respect for Mr. Coffey. Although we didn't always agree with his decisions, he has made us somewhat comfortable by explaining on the record why he was voting the way he did. His high intellect, being a quick study, and his ability to get to the bottom line quickly has provided the Board with one of its best members in my memory. He's a champion of sustained yield management. He makes sure that subsistence has the management priority our constitution decries. He was the leader in the Board's new process which is to allow meeting attendees (the public) to volunteer to serve on committees which discuss and forward recommendations to the Board prior to their deliberations. The new approach enhances public participation in the Board process. His legal background has been beneficial to the Board as he has brought out many nuances that may have prevented the Board being sued and therefore saving the State a lot of legal fee expense.

The Alaska Sportfishing Association has endorsed Dan's reappointment and recommends an affirmative recommendation from the Fisheries Committee.

thank you

Phil Cutler, President
907-561-1461



TONY KNOWLES
GOVERNOR
governor@gov.state.ak.us

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532
www.gov.state.ak.us

April 26, 1999

Mr. Bruce J. Gabrys
10229 Baffin Street
Eagle River, AK 99577

Dear Mr. Gabrys:

The appointment in which you have expressed an interest has been made. The deadline for making these appointments was March 31, 1999, the day we received your application. Each candidate had impressive professional and personal qualifications.

Governor Tony Knowles has reappointed Dan K. Coffey of Anchorage, Grant J. Miller of Sitka, and Virgil L. Umphenour of Fairbanks to public seats on the Board of Fisheries.

We appreciate your willingness to assist Governor Knowles by applying for service on the board. If there are other boards or commissions that you would like to be considered for, please notify my office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cindy Smith".

Cindy Smith
Coordinator
Boards and Commissions

Bruce J. Gabrys
10229 Baffin Street
Eagle River, AK 99577
(907) 694-3874

May 3, 1999

Representative Bill Hudson
Chairman,
Special Committee on Fisheries
State Capitol, Room 108
Juneau, Alaska 99801-1182

Sent By: FAX (907) 465-2273

Re: Objection to Appointment of Dan K. Coffey to Board of Fisheries

Dear Representative Hudson,

I ask your support in rejecting the confirmation of Dan K. Coffey to the Board of Fisheries. The current Board of Fisheries is not a balanced, well-rounded board. The Board of Fisheries currently has three members, including Mr. Coffey, which reflect Cook Inlet sport fishing interest. I urge you to use this board seat vacancy to balance Cook Inlet influence by rejecting the confirmation of Mr. Coffey and urging the Governor to appoint a commercial harvester to the board. The Governor had received requests to serve on the board from myself and other qualified applicants from which he could select to balance the board.

I will be at the Anchorage LIO for the 5:00 p.m. hearing today and would like to speak on behalf of balancing the board. I can be contacted at the address listed above, by telephone at (907) 694-3874, by fax at (907) 694-3832, or by e-mail at: gabrys@alaska.net.

Sincerely,



Bruce J. Gabrys

Bruce J. Gabrys
10229 Baffin Street
Eagle River, AK 99577
(907) 694-3874

March 30, 1999

Honorable Tony Knowles
Governor, State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Sent By: FAX (907) 465-3532
and USPS

Re: Request for Appointment to the Board of Fisheries

Dear Governor Knowles,

I am requesting appointment to the Board of Fisheries. Adding my name to the list of applicants provides an option for you to balance the composition of the Board. I am a twenty year resident of Alaska, a small business owner in Eagle River, a sport fisherman, and a commercial fisherman with fifteen years of experience fishing Gulf of Alaska and Cook Inlet waters. I am confident that I have the broad range of experience and integrity required for serving on this very important board.

My background includes over twenty years of public service, fifteen of which has been in the Alaska National Guard. As a reference of my integrity, dedication and character, I offer one of your former commissioners, Jake Lestenkof. I had the privilege to work for Major General Lestenkof for the four years prior to his retirement.

I can be contacted at the address listed above, by telephone at (907) 694-3874, by fax at (907) 694-3832, or by e-mail at: gabrys@alaska.net. I am looking forward to serving on the Board of Fisheries. I am certain you will be pleased with my performance as your appointee.

Sincerely,


Bruce J. Gabrys

Commercial Fishing

Property Management

GABRYS & COMPANY
P.O. Box 771751
Eagle River, Alaska 99577

Bruce J. Gabrys

10229 Baffin St.
Eagle River, AK 99577

(907) 694-3874
FAX (907) 694-3832
E-Mail: gabrys@alaska.net
FAX (907) 694-3832

FAX TRANSMISSION

PELAGIC RESOURCES INC.

P.O. Box 3845
KODIAK, AK 99615
(907) 486-6933
FAX: (907) 486-6943

APR 19 1999

To: Representative Allen Austerman Date: April 18, 1999
Fax #: Pages: 1, including this cover sheet.
From: Jay E. Stinson
Subject: Board of Fish Confirmation

COMMENTS:

Dear Allen,

I understand that the House Resources Committee will hold BOF confirmation hearing on April 21.

I can not emphasize enough that Virgil Umphenhour not be reappointed. The same applies to Dan Coffy, however I would think that he has enough political support to survive the hearing process.

Virgil is an unbalanced individual that is doing his damndest to destroy the commercial fishing industry in the Gulf of Alaska. He has proven himself to be ignorant of marine fisheries. He hides behind the curtain of conservation to allocate resources to his chosen cronies. He has shown himself to be rude, disrespectful, prejudiced and less than enlightened (an image of a spruce stump come to mind). Maybe its just a personal thing, but I find him to be contemptible.

Coffy is probably more dangerous to the commercial fisheries of Alaska, in that he is extremely bright and efficient at reforming the board process into a vehicle to support the interests of his constituency.

After watching both of these men in action recently, its my understanding that they really don't care about the concerns of the commercial fishing industry. It appears that their intend is to turn Alaska fisheries resources into the exclusive domain of the sport and western Alaska fishermen.

Grant Miller is the only commercial fisherman on the board. If he wants the job, he needs to remain seated.

Good Luck.



Alaska State Legislature

Please enter into the record my testimony to the House Fisheries Committee

On BOF Confirmations, dated 4/26/99.

I would like to speak in support of reconfirming Mr. Dan Coffey, Virgil Umphinauer, and Grant Miller to the Alaska Board of Fisheries for another term.

As a sports and personal use fisher I cannot understand how the State of Alaska can take a natural resource like Salmon and guarantee one user group a set amount of fish year after year no matter what numbers are coming in on that year's run. The practice of guaranteeing one user group before another user group is unconstitutional. The State Board of Fish should remain as it is now - they understand more of the issues of all user groups than any Board I've seen work.

Signed:

Donna L. Riddle

Donna L. Riddle

Testifier

Representing (Optional)

1535 Angler Drive, Kenai, AK 99611

Address

Phone: (907) 283-5853 FAX: (907) 283-5813

Phone Number



Alaska State Legislature

Please enter into the record my testimony to the House Fisheries Committee

On BOF Confirmations, dated 4/26/99.

I would like to speak in support of reconfirming Mr. Dan Coffey, Virgil Umphrauer, and Grant Miller to the Alaska Board of Fisheries for another term. After attending most BOF meetings for the past 3 years and being involved in the sport fishing business in Alaska for 15 years, it is evident to me these three gentlemen are forward looking, well read, conservation-minded BOF members who should be reconfirmed.

It is time that state policy and state regulations be crafted to look toward conservation of our wonderful salmon populations rather than continue the management for maximum sustained yield for the salmon gill-netters of Cook Inlet. These 3 gentlemen see that we must look more at an optimal sustained yield concept. In other words, provide for greater escapement into our rivers and also greater escapement to the spawning grounds of sockeyes, Kings, and silvers. The general public, i.e., personal use fishers, subsistence fishers, and sport fishers have always taken the leftovers from the small minority (the commercial gill-netters) of Cook Inlet. Now, just because a person bought a limited entry permit from the State does not mean they should be guaranteed a living by the State. The State certainly does not guarantee that sportfishing guides/charter boat operators get a guaranteed income. Commercial fishermen pay \$60.00 per year to the State to fish while sport fishing guides (on the Kenai River) pay \$500.00 (for residents) and \$1,400.00 (for nonresidents) for the privilege of fishing and they still only get the leftover fish after drift gill-netters and set gill-netters.

Some of the new rulings by the BOF during the 1999 cycle give sport fishers/personal use fishers a more fair portion of this public asset (salmon), but sport fishing guides were restricted more than set and drift gill-netters. The bottom line is, sport fishers can live with these restrictions for the sake of the resource and gill-netters need to suck it up and do the same.

Signed:

Stephen S. Riddle

Stephen S. Riddle

Testifier

Sports Fishermen

Representing (Optional)

1535 Angler Drive, Kenai, AK 99611

Address

Phone: (907) 283-5853 FAX: (907) 283-5813

Phone Number



Alaska State Legislature

Please enter into the record my testimony to the HFSH
committee name
committee on Bo. of Fisheries Conf., dated 4-26-99
bill # / subject

As Cook Inlet set netters since 1973, we highly oppose the confirmation of Mr. Coffey, Mr. Miller and Mr. Umphenour to the Board of Fisheries. They showed their total disregard for the health of the Kenai River by increasing the maximum salmon escapement to 1.2 million fish. Fish & Game records show an escapement of over 1.0 million fish per year decreases the amount of returning adults four to five years later, thereby eventually destroying the Kenai River for the future of our children, grandchildren and great-grandchildren.

Signed: Richard Musgrave
Testifier

Representing (Optional)

Box 3522 Kenai AK 99611

Address

907-263-7233

Phone number

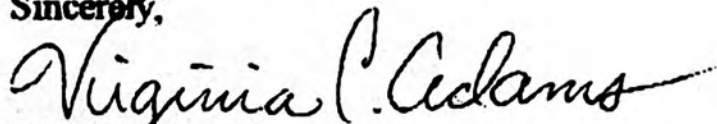
SALAMATOF SEAFOODS, INC.
CONTRIBUTIONS TO LOCAL ECONOMY

	1996	1997	1998
DIRECT LABOR (INCL PR TAX)	177,825	205,265	197,334
INDIRECT LABOR (INCL PR TAX)	<u>382,354</u>	<u>344,421</u>	<u>308,105</u>
TOTAL PAYROLL EXPENSES	<u>560,179</u>	<u>549,686</u>	<u>505,439</u>
 FISH TAX (PROCESSOR)	 72,965	 62,346	 14,341
ASMI TAX (PROCESSOR)	7,297	6,235	1,434
AQUACULTURE TAX (FISHERMAN)	34,856	40,993	9,561
MARKETING TAX (FISHERMAN)	17,428	20,497	4,723
SALES TAX	3,150	3,543	3,831
PROPERTY TAX + MISC. TAXES AND PERMITS	<u>38,278</u>	<u>42,085</u>	<u>38,614</u>
TOTAL TAXES	<u>173,974</u>	<u>175,698</u>	<u>70,504</u>
 UTILITIES (ELECTRIC, GAS, WASTE)	 <u>85,655</u>	 <u>80,852</u>	 <u>82,923</u>
 PROF FEES (ACCOUNTING AND LEGAL)	 <u>19,060</u>	 <u>29,416</u>	 <u>17,270</u>
 NO OF PERMITS FISHED - DRIFT	 29	 30	 29
REVENUE EARNED - DRIFT	<u>962,855</u>	<u>882,270</u>	<u>245,184</u>
AVERAGE PER DRIFT PERMIT	<u>33,202</u>	<u>29,409</u>	<u>8,455</u>
 NO OF PERMITS FISHED - SETNET	 29	 27	 26
REVENUE EARNED - SETNET	<u>907,023</u>	<u>904,760</u>	<u>205,564</u>
AVERAGE PER SETNET PERMIT	<u>31,277</u>	<u>33,510</u>	<u>7,908</u>

(2)

I feel the Legislature has an opportunity at this time to send the Governor a message that it is time to put some balance back on the Board of Fisheries. It is my sincere hope that Mr. Umpenhower will not be confirmed to the BoF and that his vacancy will give the Governor an opportunity to appoint an individual with commercial fish experience and knowledge. Alaska's fishing industry deserves a BoF that is unbiased, intelligent and knowledgeable of the intricacies involved in the crucial decisions they make, many coastal families lives depend on those qualities. Quite frankly, Mr. Umpenhower does not possess those qualities and his time on the BoF should end.

Sincerely,



Virginia C. Adams

Box 8905

Kodiak, AK. 99615

907-486-6834/486-8803-FAX

vadams@ptialaska.net

cc: Rep. Bill Hudson
Senator Jerry Mackie
Rep. Ethan Berkowitz
Senator Johnny Ellis

CORRECTION

**THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION**



Rev. 6/98

Central Microfilm Services
Department of Education & Early Development
State of Alaska

SALAMATOF SEAFOODS, INC.
CONTRIBUTIONS TO LOCAL ECONOMY

	1996	1997	1998
DIRECT LABOR (INCL PR TAX)	177,825	205,265	197,334
INDIRECT LABOR (INCL PR TAX)	<u>382,354</u>	<u>344,421</u>	<u>308,105</u>
TOTAL PAYROLL EXPENSES	<u>560,179</u>	<u>549,686</u>	<u>505,439</u>
 FISH TAX (PROCESSOR)	 72,965	 62,346	 14,341
ASMI TAX (PROCESSOR)	7,297	6,235	1,434
AQUACULTURE TAX (FISHERMAN)	34,856	40,993	9,561
MARKETING TAX (FISHERMAN)	17,428	20,497	4,723
SALES TAX	3,150	3,543	3,831
PROPERTY TAX + MISC. TAXES AND PERMITS	<u>38,278</u>	<u>42,085</u>	<u>36,614</u>
 TOTAL TAXES	<u>173,974</u>	<u>175,698</u>	<u>70,504</u>
 UTILITIES (ELECTRIC, GAS, WASTE)	 <u>85,655</u>	 <u>89,852</u>	 <u>82,923</u>
 PROF FEES (ACCOUNTING AND LEGAL)	 <u>19,060</u>	 <u>29,416</u>	 <u>17,270</u>
 NO OF PERMITS FISHED - DRIFT	 29	 30	 29
REVENUE EARNED - DRIFT	<u>962,855</u>	<u>882,270</u>	<u>245,184</u>
AVERAGE PER DRIFT PERMIT	<u>33,202</u>	<u>29,409</u>	<u>8,455</u>
 NO OF PERMITS FISHED - SETNET	 29	 27	 26
REVENUE EARNED - SETNET	<u>907,023</u>	<u>904,760</u>	<u>205,564</u>
AVERAGE PER SETNET PERMIT	<u>31,277</u>	<u>33,510</u>	<u>7,906</u>

Friday, April 23, 1999

Rep. Alan Austerman
State Capitol
Juneau, Alaska 99801

Dear Rep. Austerman,

I would like to take this opportunity to comment on the confirmation of Virgil Umpenhower to the Alaska Board of Fisheries. Since Mr. Umpenhower was appointment to the BoF I have attended all BoF meetings relating to my area, Kodiak. I have attended these BoF meetings as the President of Northwest Setnetters Association, as a Board member of United Fishermen of Alaska and as a member of the Kodiak Salmon Working Group. Most recently I attended the BoF meetings in Anchorage dealing with State shellfish/groundfish proposals as a BoF appointed member of the Kodiak Non-Pelagic Trawl Committee. I feel I have had a great deal of time and interaction with Mr. Umpenhower on which to base my opinions regarding his qualifications.

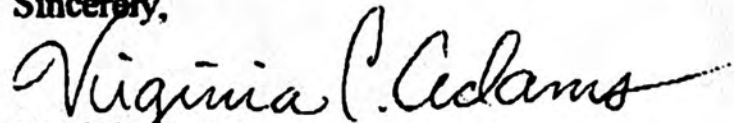
Mr. Umpenhower consistently shows an inability to keep an open mind when deciding complex issues, and in fact can be absolutely counted upon to bring his own strong opinions and preconceived ideas to important BoF deliberations and votes. I witnessed this recently in January at the BoF meetings in Kodiak. Mr. Umpenhower, making a point in the evening to several BoF attendees, took a bag of potato chips, dumped them on the floor, ground them with his foot and then commented; "That's what a King Crab looks like after a trawl runs over it!" This to me is not the kind of behavior I would expect out of a person holding such an important position as a BoF member does.

Mr. Umpenhower, has earned the reputation as a closed minded, opinionated Board member whose vote can be counted on any issue BEFORE the BoF even meets. Mr. Umpenhower is very forthright in his predisposition towards several commercial gear types such as non-pelagic trawl, as well as aquaculture associations in Alaska. This type of attitude is inexcusable in an individual who holds so much power in such an important industry to the State.

(2)

I feel the Legislature has an opportunity at this time to send the Governor a message that it is time to put some balance back on the Board of Fisheries. It is my sincere hope that Mr. Umpenhower will not be confirmed to the BoF and that his vacancy will give the Governor an opportunity to appoint an individual with commercial fish experience and knowledge. Alaska's fishing industry deserves a BoF that is unbiased, intelligent and knowledgeable of the intricacies involved in the crucial decisions they make, many coastal families lives depend on those qualities. Quite frankly, Mr. Umpenhower does not possess those qualities and his time on the BoF should end.

Sincerely,



Virginia C. Adams

Box 8905

Kodiak, AK. 99615

907-486-6834/486-8803-FAX

vadams@ptialaska.net

cc: Rep. Bill Hudson
Senator Jerry Mackie
Rep. Ethan Berkowitz
Senator Johnny Ellis

APR 23 3 55 PM 4:02 PM C. D. P. O. FAX NO. 5074245450 P. 1

Dear Sir:

I am writing concerning the confirmation hearings of Mr. Virgil Umphenour. In my opinion he should not be a member of the Board of Fisheries.

Mr. Umphenour's statements concerning PWSAC and Copper River fishermen have more than effectively demonstrated his unsuitability for the Board.

I have been a Copper River fisherman for 20 years and find his comments extremely offensive.

It is absurd to think Copper River fishermen want to "kill every fish", as Mr. Umphenour maintains. My family and I are dependent on a healthy run which means we have a direct interest in the future of the Copper River salmon returns.

Mr. Umphenour's demonstrated bias against PWSAC also concerns me. PWSAC restructured its debt in 1997. Payments are expected to start June, 1999 which is earlier than originally anticipated. According to Bud Perrine, CEO, Mr. Umphenour should be aware of this from meeting's he attended earlier this year.

Mr. Umphenour has stated to you, "I don't remember any executive sessions during the last Area E Board meetings". Since these meetings are a matter of public record, a tape of this occurrence should be listened to by every committee member. Not only would this be proof an executive session was called, it would also be another demonstration of Mr. Umphenour's unsuitability to be a Board member. I would also recommend that committee members read through the entire record of this meeting and see for themselves how consistently Mr. Umphenour demonstrates his bias concerning Copper River fishermen.

Mr. Umphenour's statements to you and his record from previous Board meetings should disqualify him from future consideration. If

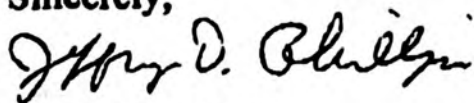
this was a court of law, Mr. Umphenour would not be able to hear a case concerning Copper River fishermen. We deserve no less from the Board of Fisheries.

In my experience testifying and observing Fish Board meetings I have seen many Board members leave their biases at the door and deliberate with open minds. Mr. Umphneour seems incapable of this. As a comercial fisherman, sports fisherman, and an Alaskan resident I deserve open-mindedness from my Board members.

Mr. Umphenour should not be retained as a Board of Fisheries member

Thank-you.

Sincerely,



Jeffrey D. Phillips
Box 1565
Cordova, AK. 99574
(907) 424-3174

To: Representative Bill Hudson, Chairman Fisheries Committee

Robert D. Schell
From: Robert D. Schell, Chairman, Board of Directors, Seafood Producers Co-op

Subject: Board of Fish Appointees

Date: April 23, 1999

Seafood Producers Cooperative endorses the reappointment of Grant Miller of Sitka to the board of fish. Our cooperative consists of 495 members who participate in hook and line fisheries, primarily the troll salmon fishery and the various long line fisheries of Alaska.

Grant is knowledgeable of these fisheries as well as the net and sport fisheries of Alaska. This knowledge combined with the demonstrated ability to listen to the various constituencies who use these resources makes him much too valuable a board member to be lost to the political vagrancy of the various factions involved in fishery allocations.

The board of fish is a tough assignment. I have participated in their meetings over the past decades and know only too well the animosities that can develop if decisions do not go the way some parties would prefer. The board of fish members should not be scapegoats for making the tough decisions.

Box 1367
Sitka, Alaska 99835
907-747-8541

April 24, 1999

Representative Bill Hudson
Chairman: Fisheries Committee
State Capitol Rm. 108
Juneau, Alaska 99801-1182

Dear Mr. Hudson,

I have been a commercial fisherman residing and fishing out of Kodiak for the past 33 years. During that time, I have been on the Board of Directors of the United Fisherman's Marketing Association for over 20 years and more recently I have been the Vice President of the Alaska Draggers Association for the last 4 years. My involvement in fisheries politics has up until now been on a local level.

At the January Board of Fisheries meeting held in Kodiak I testified as a stakeholder on Proposal #132: Ban Bottom Trawling in State Waters-Kodiak, and subsequently became a member of the groundfish committee. From there I was appointed by the BoF to serve on the Non-Pelagic Trawl Task Force which I did for 2 months before the March BoF meetings in Anchorage. I must say that the inclination of the BoF to close ALL State waters to non-pelagic trawling had me in disbelief. That this governing body was making decisions affecting so many people and would be so biased and unwilling to listen to both sides of the issue was shocking. In particular, Mr. Umphenower's manner of professional conduct could not have been LESS professional.

During the March BoF meeting in Anchorage, and more specifically the final deliberations by the BoF on Proposal #132, Mr. Umphenowers predisposed, biased and totally unprofessional conduct was rampant, as is demonstrated by the enclosed tape. The tape begins with Dr. White, Chairman of the BoF, asking Mr. Dave Jackson, Dept. of Fish & Game-Kodiak, about safety issues relating to proposed closed areas. Following, Mr. Umphenower launches his perspective.

You be the judge. Is this the kind of individual who will make intelligent, fair, unbiased decisions that will not only affect the livelihoods but also the

(2)

**lives of many coastal Alaskan fishermen and their families? I don't think so.
Do not confirm Mr. Umpenhower!**

Sincerely,

**Skip Bolton
Box 2852
Kodiak, Alaska 99615
907-486-4099/486-2030-FAX**

**cc: Rep. Alan Austerman
Senator Jerry Mackie**



Alaska State Legislature

Please enter into the record my testimony to the HFSH
committee name
committee on Confirmations Bd of Fish, dated 4-26-99
bill # / subject

Anthony J. Cange

P.O. Box 29647, Anchorage, Alaska 99507 • Telephone (907) 343-6967 • Fax (907) 344-5909

April, 23 1999

To whom this may concern,

I am writing this letter today to express my concern for the conformation of Dan Coffey, Grant Miller, and Virgal Umphenour to the Board of Fisheries. I am a concerned vessel owner and Limited Entry Permit holder in the Cook Inlet. I am also A life long resident of Alaska. I can't express enough my strenuous objection to these individuals being confirmed to the board. Thank you for your time concerning this matter.

Respectively submitted,

A handwritten signature in cursive script, appearing to read "Anthony J. Cange".

Anthony J. Cange

Signed: _____

Testifier

Representing (Optional)

Address

Phone number

POM for Representative Hudson

From: Ms. Brenda Strother
PO Box 3517

Telephone: 283-4981

Kenai, AK 99611

NON Constituent

Registered Voter: Y

Subject: BOARDS & COMMISSIONS
Message:

I DO NOT WANT COFFEY, MILLER OR UMPHENOUR REAPPOINTED. OUR FISHERIES HAVE BEEN GOING DOWNHILL. THE COMMERCIAL FISHERMEN HAVE BEEN STARVED OUT. THESE THREE FAVOR SPORT OVER COMMERCIAL FISHERIES. THERE IS PLENTY OF FISH FOR EVERYONE IF IT WAS MANAGED RIGHT. SO FAR, IT HAS NOT BEEN MANAGED RIGHT. EVERY YEAR THEY ARE WANTING MORE FISH UP THE KENAI RIVER, WHICH HAS NOT GOTTEN ANY LONGER, JUST A LITTLE WIDER DUE TO SPORT FISHERMEN'S HIGH-POWERED BOATS.

Entered in SOL on 4/23/99 POMID: 7172

Distribution: 60

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Message 1 out of 3.

POM for Representative Hudson

From: Mr. Thomas Strother
PO Box 3517

Telephone: 283-4981

Kenai, AK 99611

NON Constituent

Registered Voter: Y

Subject: BOARDS & COMMISSIONS
Message:

I DON'T WANT COFFEY, MILLER & UMPHENOUR REAPPOINTED BECAUSE THEIR TREATMENT OF COMMERCIAL FISHERMEN IS UNFAIR. THEY ARE MOSTLY IN FAVOR OF SPORT FISHERMEN. WHEN THE COMMERCIAL FLEET IS CONSIDERED, THE DRIFTERS ARE LOW MAN ON THE TOTEM POLE. BECAUSE OF THIS, OUR PERMITS HAVE DROPPED RAPIDLY IN VALUE & OUR ESCAPEMENTS HAVE BEEN POOR WITH LOW NUMBERS OF FISH FOR US TO HARVEST. WE'VE BEEN ON A DECLINE FOR THE PAST 10-15 YEARS. SOMETHING MUST CHANGE!

Entered in SOL on 4/23/99 POMID: 7176

Distribution: 60

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Message 2 out of 3.

POM for Representative Hudson

From: Mr. Mel Erickson
PO Box 1127

Telephone: 262-2980

Soldotna, AK 99669

NON Constituent

Registered Voter: Y

Subject: BOARDS & COMMISSIONS

Message:

**WE SUPPORT THE RECONFIRMATION OF GRANT MILLER, VIRGIL UMPHENOUR AND
DAN COFFEY TO THE BOARD OF FISHERIES.**

Entered in SOL on 4/23/99 POMID: 7218

Distribution: 60

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Message 3 out of 3.

POM for Representative Hudson

From: Ms. Francine J Bennis
21407 Bowery Ln

Telephone: 688-7827

Chugiak, AK 99567

NON Constituent

Registered Voter: Y

**Subject: CONFIRMATION
Message:**

I STRONGLY SUPPORT THE CONFIRMAITON FOR THE REAPPOINTMENT OF VIRGIL UMPHENOUR. I FISHED COMMERCIALY FOR 16 YEARS AND AM FAMILIAR WITH A NUMBER OF FISHERY ISSUES AND I BELIEVE VIRGIL WORKS IN THE BEST INTEREST OF THE PEOPLE OF ALASKA. HE IS WILLING TO TAKE THE TIME TO STUDY ISSUES AND HAS DONE AN EXCELLENT JOB ON THE BOARD OF FISH.

Entered in ANC on 4/23/99 POMID: 7105

Distribution: 8

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Message 1 out of 1.

Sylvia R. Lange
Box 135
Cordova, Alaska 99574

House Special Committee on Fisheries,
Mr. Bill Hudson, Chair

April 24, 1999

Dear Mr. Hudson,

I am a lifetime resident of Alaska. I was raised in Cordova by my parents, who like their parents before them, lived off the bounty of the area. I have been a subsistence and commercial fisherman dependent on the Copper River and Bering River for my entire life. My husband and I operate a fish processing facility which employs 100+ workers, and is wholly dependent on the PWS and Copper River and Bering River Districts. I write today, for the first time ever, because I am opposed to the re-appointment of Mr. Virgil Umphenour to the Board of Fisheries.

I have been involved as an advocate for my industry for the past 25 years. In all those years of interaction with the Board of Fisheries, I have come to respect the difficult job those individuals who serve on the Board face. The position often requires the problem solving of Solomon and the patience of Job. As a member of the general public, the most frustrating thing when coming forward to testify or participate in the Board of Fisheries process, is the obvious bias some members bring to the table. Conversely, it is a breath of fresh air when a member admits he is ill informed and brings to the hearings a willingness to learn, thereby making judgments based on the public process.

Mr. Umphenour has demonstrated repeatedly he comes to the table with a set agenda. Common decency dictates a certain demeanor of public officials in the course of their appointed business. While attending the Board of Fish meeting in Cordova, Mr. Umphenour behaved rudely to those of the public with differing opinions or facts which contradicted his prejudices. Other Board Members, at the conclusion of the meeting, congratulated the public participants on the congeniality and the hospitality of our community.

Mr. Umphenour has decided against all manner of facts, that the commercial salmon fishery of the Copper River Flats is run by individuals who have no regard for the resource. This is simply not true and the facts bear me out. The Copper River Flats has had a thriving commercial fishery and operating canneries on the Delta since 1898. Mr. Umphenour has accused the drift gillnetters of

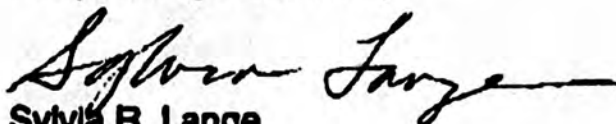
House Committee on Fisheries
4/24/99
P.2

"seining" king salmon in the shallows of the Copper River Delta inside the so-called "barrier islands". These barrier islands he keeps referring to are sand bars which in fact define the Copper River Flats from the Gulf of Alaska. Of course the fishermen oppose being shut out of this area--it is the traditional and customary fishing ground of the fishery, and has been for over 100 years! As for "seining" with drift gillnets in an area that has 10 knot tide influences, it defies imagination and reveals an ignorance of the area and fishery.

It is true that our fleet has become very efficient in recent years. It is also true that the quantum leap in efficiency happened about ten years ago with the advent of light, fast, shallow vessels, and improved net materials. The local managers of the Alaska Dept. of Fish & Game have been able to gauge and factor in this variable in the course of making their management decisions for many years now. As a result to their management of the resource, the Copper River Sockeye and King Salmon runs have remained strong, viable and experiencing record runs in 1997, '98, and '99.

I applaud our managers at ADF&G for their diligence and hard work. We owe our economic survival to the health of the Copper River. It is in our best interest to protect the resource while maintaining a good working relationship with members of the Board of Fish. We understand we will not always agree on allocation issues, but we must retain basic respect for the process and participants. Mr. Umphenour does not fit the bill.

Respectfully submitted,


Sylvia R. Lange

David R. Martin
71605 Sterling Hwy.
Clam Gulch, Ak. 99568
April 26, 1999

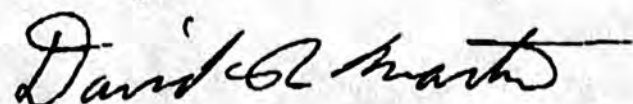
House Special Committee of Fisheries
Bill Hudson, Chair
Dear Committee members,

I have been involved in the Boards of Fish and Board of Game local Advisory Committee process for over 20 years. I have been the Chairman of the Central Peninsula Advisory Committee for the past seven years. I am a firm supporter of the local Advisory Committees which were formed to be a channel for the local public to voice their opinions, expertise on local fish and game issues, and their concerns on regulations effecting them, the resource and habitat to the Boards. This has been a good system. Unfortunately the current Board of Fish has neglected and actually fought in opposition to many Advisory Committees Statewide. Check the record for Advisory Committees, other local groups, businesses, governments and even the Fish and Game Departments position on various issues and you will find the BOF often does the exact opposite. This is all to true here in Cook Inlet. One example is Dan Coffey's Board generated, out of cycle, allocation Proposal D three years ago. All the Board members voted to take up this proposal. Not only did it undermine the Advisory Comm. and Board process, it created a burden on the Advisory Comm., the public and the Dept. because of three extra meetings and at a cost of over \$100,000. The end result was an apology from Mr. Coffey, after he fought hard all winter to try to push it through. Gentlemen, this action was not professional, it was not responsible to the Board and Advisory Committee process, and it was not a responsible use of State money.

The Advisory Committee process has really deteriorated in the last three years because of the dictatorship approach the current Board has taken. Several good people and Chairmen have resigned. I hear many volunteer AC members state there frustration and say "what is the use wasting our time and money. The Board already has there minds made up and are going to do what they want to do anyway. There is nothing we can do to stop them. It doesn't even matter what the biology and science says. The Board still does its own thing." These are sad comments about Board of Fish members that are suppose to be creditable stewards of the resource and habitat and be responsible members working with the public not dictating to them.

Gentlemen, it is time for new blood on the Board of Fish. Please do not confirm Dan Coffey, Virgil Umpenhour, or Grant Miller for reappointment. I am alarmed, and you should be too, that this current Board is making regulations that are not based on sound biological and scientific data but ever more so on antidotal information from special interest groups. Habitat, Maximum Sustained Yield management (a Constitution mandate) the people's and the State's economic futures are not being protected. Managing fisheries socially, instead of biologically, has always destroyed salmon runs worldwide. It will happen in Alaska too if we let it. We must protect our great fish resource and the people that depend on it. Thank you for your time and effort

Sincerely,





Alaska State Legislature

HOUSE SPECIAL
Please enter into the record my testimony to the COMMITTEE ON FISHERIES
BOARD OF FISHERIES committee name
committee on CONFIRMATION HEARING, dated APRIL 26, 1999
bill/subject

I WILL BE UNABLE TO ATTEND
TODAYS HEARING.

PLEASE INCLUDE MY LETTER
ATTACHED AS MY TESTIMONY.

THANK YOU.

Signed:

M. J. Stockwell
Testifier

SELF
Representing (Optional)

P.O. BOX 721, EMER LANDING AK 99572
Address

595-1540
Phone No.

DATE: April 25, 1999

TO: House Special Committee on Fisheries.
Representatives Hudson, Dyson, Harris, Morgan, Whitaker,
Kapsner, and Smalley

FROM: Bill Stockwell
P.O. Box 721
Cooper Landing, AK 99572-0721
Phone & Fax 595-1540

SUBJECT: April 26, 1999 Board of Fisheries Confirmation Hearing

Dear Chairman Hudson and Committee Members,

I STRONGLY SUPPORT THE REAPPOINTMENT AND CONFIRMATION OF DAN COFFEY, GRANT MILLER AND VIRGIL UMPHENOUR TO THE BOARD OF FISHERIES.

As a member of a local advisory committee and a member of the public, I have testified before these Board members and served in the committee process several times recently. While we may not always agree, I feel their positions on issues have been well thought out and in the best interests of Alaska's resources and people. At no time is it possible to satisfy ALL special interests, including mine.

I ask you also to please disregard Kenai Peninsula Borough Resolution 99-034 strongly opposing the confirmation of the three current members. I am appalled and embarrassed that my local government, the Kenai Peninsula Borough Assembly, would blatantly advocate and lobby for a special segment of our local economy to the detriment of other viable and vital parts of our local business sector, let alone the damage this type of thinking does to the public's uses of our common resources.

While conserving habitat and resource, the members of the Board of Fisheries must recognize the needs of subsistence, personal use, sport fishing, commercial sport fishing, and commercial fishing. These board members have worked hard to insure that these needs are met. Please support the confirmation of the reappointments of these current members.

Sincerely,



Bill Stockwell

ALASKA CRAB COALITION

3901 Leary Way N.W. Ste. 6
Seattle, Washington 98107
206 547 7560
206 547 0130-Fax
Email: acc-crabak@msn.com

hiz Cabrera
E.Y.I. #015
Cabri

March 31, 1999

CORRECTION

The Honorable Tony Knowles,
Governor,
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

RE: APPOINTMENTS TO THE BOARD OF FISHERIES

Dear Governor Knowles:

On behalf of the Board of Directors of the Alaska Crab Coalition (ACC), I wish to recommend the reappointments of Dan Coffey, Grant Miller and Virgil Umphenoong to the Board of Fisheries.

The ACC has been involved with the both the Board of Fisheries and North Pacific Fisheries Management Council processes for over twelve years.

All three of the Board Members identified above have gained extensive background on Alaskan fisheries, not only salmon and herring, but groundfish and crab. The knowledge they have acquired on Bering Sea and Aleutian Islands crab fisheries and the bifurcated roles of the Board of Fisheries and the NPFMC in crab, and groundfish is a significant factor in the consideration of today's appointments to the Board of Fisheries.

These Board Members also have extensive experience in the development of the Board Committee Process, which has been a significant improvement in the decisionmaking process.

Sincerely,

Gordon Blue

Gordon Blue, President
Alaska Crab Coalition



2550 Denali Street, Suite 1201
Anchorage, Alaska 99503-2737
(907) 276-2007 Fax (907) 279-7913

March 17, 1999

Edward E. Crane
President

The Honorable Tony Knowles
Governor, State of Alaska
Post Office Box 110001
Juneau, Alaska 99801-0001

Dear Governor Knowles,

We understand that Mr. Frank Homan has requested your favorable consideration for appointment to the Alaska Board of Fisheries. This is to express our strong support of that request.

Frank has been known to this institution since its establishment; he was the first Chairman of its Board of Directors. I have personally known Frank since I became CFAB's CEO in 1985. During that period I have sought information, counsel, and guidance from Frank many times.

Frank has an established and unblemished record of integrity, thoughtful analysis, considered judgement, and commitment to duty. His participation on the Board of Fisheries would undoubtedly temper the air of partisanship which has been imposed upon, and sometimes exhibited by, that Board in recent years. Your appointment of Frank Homan will be an incremental but meaningful step toward raising the Board's dialogue to the levels embodied in the language of its governing statute, and will reflect most favorably on the Knowles Administration. I cannot imagine any other candidate who might more clearly personify the standards implied by those who advocate a "professional" Board - Frank Homan has demonstrated that he can, and will, bring a professional approach to any challenge before him!

Very truly yours,

Edward E. Crane
President

Alaska Commercial Fishing and Agriculture Bank



P.O. Box 1649

Cordova, Alaska 99574-1649

907-424-3115

Fax: 907-424-3116

E-mail: crspa@copperiver.com Web: <http://www.copperiver.com>

APR 21 1999

April 17, 1999

Senators and Representatives
Alaska State Legislature
State Capital (MS3100)
Juneau, AK 99801-1182

Dear Senators and Representatives

The Copper River Salmon Producers represent the majority of commercial salmon harvesters in Prince William Sound and the Copper River Flats.

Please add our voices of strong opposition to the re-appointment of Virgil Umphenour to the Board of Fish. Appointees to this board must be open and unbiased, have a commitment to proper process and a passion for the preservation and fair allocation of the states fisheries resources. They must balance history, tradition, economic dependence, statutory requirements, the needs of fishing families, cannery workers, and coastal communities when making regulatory decisions.

Our experiences with, and observations of Mr. Umphenour have shown that he brings none of these traits to his board seat.

With a value to the state of over \$1 billion, the Commercial Fishing Industry expects appointees to the board who understand the delicate balance between all user groups; subsistence, commercial and sport. We feel that the state would be better served by a different appointee. The Governor can do a better job in this appointment, and we respectfully request that you remind him of his responsibilities by not confirming Mr. Umphenour.

Respectfully,

Bill Webber
President

cc. Governor Tony Knowles

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Independent Fisherman Speaking with a United Voice