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SB

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SB

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Ose - pari mutual betting

Guy - 7 Sud districts

Freeman - Hydro fund

OFFICE OF THE GOVERNOR
Juneau, Alaska

BOARDS AND COMMISSIONS

Administration of Justice, Governor's Commission on the
Aging, Advisory Committee on
Alaska Growth Policy Council
Alaska Map Advisory Committee
Alaska State Housing Authority
Alcoholic Beverage Control Board
Alcoholism, Advisory Board on
Architects, Engineers and Land Surveyors, State Board of
Registration for
Arts, Alaska State Council on the
ASSESSMENT REVIEW BOARD, STATE
Athletic Commission

Barber Examiners, Board of
Bicentennial Commission, Alaska American Revolution
Bristol Bay Regional Development Council

Capital Site Selection Committee
Child Advocacy, Board of Directors for the Office of
Chiropractic Examiners, Board of
Collection Agency Board
COMMERCIAL FISHERIES ENTRY COMMISSION
COMPREHENSIVE HEALTH ADVISORY COUNCIL

DENTAL EXAMINERS, BOARD OF
Developmental Disability Planning & Advisory Council
Dispensing Opticians, Board of
Division of Family & Children Services Advisory Committee
Drug Abuse, Advisory Board

EDUCATION, BOARD OF
EDUCATIONAL BROADCASTING COMMISSION, ALASKA
Educational Commission of the States
Election Campaign Commission
ELECTRICAL EXAMINERS, BOARD OF
Emergency Medical Service Committee, State
Employment of the Physically Handicapped, Committee on
EMPLOYMENT SECURITY ADVISORY COUNCIL
Environmental Advisory Board
Equal Employment Opportunity Committee

FISH AND GAME, BOARD OF
Fishermen's Fund Advisory and Appeals Council

Geographic Board, State
GUIDE LICENSING AND CONTROL BOARD

BOARDS AND COMMISSIONS CONTINUED

Hairdressing and Beauty Culture Examiners
Historical Commission, Alaska
HISTORIC SITE ADVISORY COMMITTEE
Housing Finance Corporation, Alaska
HUMAN RIGHTS, STATE COMMISSION FOR

International Development Commission, Alaska
Investment Advisory Committee

JUDICIAL COUNCIL
JUDICIAL QUALIFICATIONS, COMMISSION ON

KING CRAB MARKETING AND QUALITY CONTROL BOARD, ALASKA

Land Use Planning Commission, Joint Federal-State
Law of the Sea, Commission on the Conference of the
Libraries, Advisory Council on
LOCAL BOUNDARY COMMISSION

Manpower Advisory Committee
Manpower Planning Council, State
Manpower Services Council, State
MARINE FISHERIES COMMISSION, PACIFIC
MARINE PILOTS, BOARD OF
MEDICAL BOARD, STATE

Nursing, Board of
Nursing Home Administrators Licensing Board, Alaska

OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD
Optometry, Board of Examiners in

PAROLE, STATE BOARD OF
PERSONNEL BOARD
PHARMACY, BOARD OF
Physical Therapy Board, State
Pioneers' Home Advisory Board, Alaska
PIPELINE COMMISSION, ALASKA
Police Standards Council, Alaska
PROFESSIONAL TEACHING PRACTICES COMMISSION
Post-Secondary Education, Alaska Commission
PSYCHOLOGIST AND PSYCHOLOGICAL ASSOCIATE EXAMINERS,
BOARD OF
Public Accountancy, Alaska State Board of
PUBLIC UTILITIES COMMISSION

REAL ESTATE COMMISSION
Regents, Board of, University of Alaska
Rural Affairs Commission
Royalty Oil and Gas Board

BOARDS AND COMMISSIONS CONTINUED

Page 3

Safety Council, Alaska
Small Business Development Corporation of Alaska
SOIL, CONSERVATION BOARD
Special Legislative oil development Impact Review Committee
STATE DEVELOPMENT CORPORATION, ALASKA
STATE-OPERATED SCHOOLS, BOARD OF DIRECTORS
Student Financial Aid Committee

Teachers' Retirement Board, Alaska
TOURISM ADVISORY BOARD
TRANSPORTATION COMMISSION, ALASKA

VETERINARY EXAMINERS, BOARD OF
Violent Crimes Compensation Board
Vocational Education Advisory Council, Alaska State

WATER RESOURCES BOARD
Welding Examiners, Board of
WESTERN INTERSTATE COMMISSION FOR HIGHER EDUCATION
WORKMEN'S COMPENSATION BOARD, ALASKA

YOUNG PEOPLE IN GOVERNMENT, GOVERNOR'S COMMISSION ON THE
INVOLVEMENT OF
Yukon-Taiya Commission

The following boards and commissions are not listed in the State's Boards and Commissions publication.

Department of Administration

Labor Relations Agency
Public Employees' Retirement System

Department of Education

Advisory for Innovative Educational Programs
Special Education Advisory Council
Teacher Education & Certification Advisory Board
Museum Collection Advisory Board
Title III, ESEA Advisory Council
Southcentral Vision/Hearing Impaired Advisory Committee
Southcentral Vision/Hearing Impaired Medical Advisory Committee
Southeastern Vision/Hearing Impaired Advisory Committee
Northern Vision/Hearing Impaired Advisory Committee
Statewide Advisory Council (Right-to-Read)

Department of Fish and Game

Approximately 40 Advisory Boards

Department of Health and Social Services

Medical Care Advisory Committee

Department of Natural Resources

Alaska Parks and Recreation Council Advisory Committees
Loan Fund--Division of Agriculture

Department of Public Safety

Technical Advisory Committee
Traffic Court Task Force
Medical Advisory Committee

CORRECTED as of 10 a.m. after consultation with Messrs. Hanley and Walker. S.C.H.

13 amend

A M E N D M E N T S

TO: CSSB 62 amended

BY THE JUDICIARY COMMITTEE

On page 1, line 27, strike out "local elective", and insert: "elective municipal"

On page 2, line 14, after "within", insert a comma.

On page 6, line 16, after "within", insert a comma (,).

On page 6, line 23, after "within", insert a comma (,).

On page 8, line 13, after "200", insert "(1)".

On page 8, line 18, after "200", "(2)".

On page 9, line 19, after "voters", insert: "voting on the question".

On page 9, line 20, strike out "the municipality", and insert: "its municipal officers".

On page 9, line 20, after "chapter.", insert:

"The question of exemption from the requirements of this chapter may be submitted by the city council or borough assembly by ordinance or by initiative ordinance."

On page 10, line 9, after "within", insert a comma (,).

On page 10, line 26, after "includes", insert: "a"

Page 10, line 29: after "planning" add "or zoning"

page 11, line 12: after "corporation" delete ";" add ", however" but.

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"An Act repealing the requirement that a cause of action against the state be tried by a judge without a jury: and providing for an effective date."

2/11/75

COMMITTEE REPORT

FINANCE

HOUSE

Mr. Speaker:

Date _____

The Committee on Judiciary has had SB 50

under consideration. A Majority of the members of the Committee

recommends it DO PASS

recommends it DO NOT PASS

recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH CS FOR _____ AND THAT

CS FOR _____ DO PASS

"and" recommends it BE REFERRED TO THE _____

COMMITTEE

reports it back WITHOUT RECOMMENDATION

"other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

House Judiciary Committee
January 30, 1975

The meeting was called to order at 1:35 by Chairman Gardiner.
Members present: Gardiner, Bradley, Parr, Fink, Cotton, Brown.

HB 94 - Conflict of interest

Rep. Fink mentioned that SB 62, which is the Governor's bill on the same subject, stipulates that one must file if still in office at the filing deadline, instead of the December 11 date stipulated in HB 94. The committee agreed that the language in SB 62 was preferable.

Rep. Brown moved CS for HB 94 which included Section 10 from SB 62 and Sections II and III from HB 94. The CS was approved and reported out of committee with a do pass.

HCR 5 - Drivers License regulations

Three representatives of the Department of Public Safety, Charlie Smith, Director of Traffic Safety, Dan Kanouse and Dennis Robertson, fielded questions from the committee. They requested that the effective date of the regulations be postponed to allow time for reorganization of several department offices.

The committee requested that the Department resubmit the regulations with the effective date included so that the total package could receive legislative approval.

The committee also pointed out a typographical error in the regulations which should be corrected. Members also requested additional information concerning the weights of vehicles which are generally towed by passenger cars.

Mr. Smith indicated that the Department would gather the requested information and make the requested changes in the regulations. A meeting would be called for next week to reconsider HCR 5.

HB 55 by Cowper

SB 53

HB 91 - all concerning the requirement of posting bond before bringing suit against the State

John Spencer, City Attorney of Anchorage, testified concerning the problem of collecting attorneys fees in suits against political subdivisions other than the State. He emphasized that bonds should still be required in injunctions and temporary restraining orders cases and suggested that this be mentioned in the committee report to avoid possible misinterpretation of the law.

Rep. Cowper, sponsor of HB 55, indicated that his bill goes further than HB 91.

The committee requested that the bills be held and that a representative of the Attorney General's Office be invited to give testimony.

Adjourned 2:50 p.m.

Mr. Hickey continued that in a preliminary hearing, probable cause is the standard of proof. In a grand jury hearing, sufficiency of evidence is unexplained and uncontradicted.

Rep. Parr indicated that probable cause needn't be defined in the constitution but in the court rules or statutes. Rep. Fink indicated that he preferred that this guarantee be specified. Mr. Hickey stated that only suspicion is less grounds than probable cause.

Rep. Brown expressed his concern that the investigative functions of the grand jury would be virtually eliminated as would most grand juries.

Mr. Hickey expressed the opinion that although grand juries should improve the prosecutors' public images, in reality they do not.

HB 55 - Bond/Suit

Mr. Walker of Legislative Affairs explained a proposed amendment to lines 12 - 18. He also presented a proposed committee report to accompany the bill.

Rep. Fink moved and asked unanimous consent that the amendment suggested by Arthur Peterson of the AG's office be adopted. Mr. Brown objected. On a tied vote, the amendment failed.

Mr. Brown moved the amendment explained by Mr. Walker and asked unanimous consent. There being no objection, the amendment was accepted.

SB 53, on the same subject and currently in this committee will be acted on. A House CS for SB 53 will be drawn up which incorporates all of HB 55 as amended.

The meeting was adjourned at 3:20.

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POST OFFICE BOX 810
FAIRBANKS, ALASKA 99707

March 25, 1975

Mr. Terry Gardner
House Judiciary Committee
House of Representatives
Pouch V
Juneau, Alaska 99801

Re: Senate Bill 53

Dear Representative Gardner:

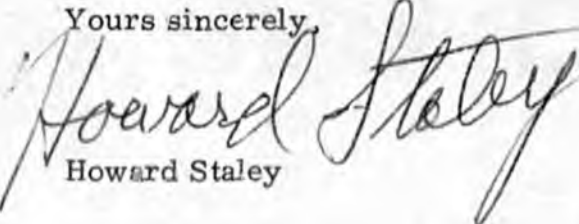
I am again writing to you in behalf of the bill, the number of which I don't have. which would repeal AS 09.50.290 requiring that any tort action against the State be tried by a judge, so that neither the State nor the parties suing the State have a right to a jury trial. The present law requiring a trial to a judge is usually explained as giving the State the "protection" from the possible passion and prejudice of a jury. From the standpoint of an attorney who has frequently represented the State and its insurance carriers, I know that this does not stand up in practice. The State is often treated far more harshly by a judge than it would be by a jury. I am enclosing an example of this in the form of an Alaska Supreme Court Opinion in State v. I'Anson issued by the Alaska Supreme Court on November 29, 1974. In that case, a civilian jeep was in the process of making a left turn across a state highway into a campground and collided with a vehicle which was passing it. The driver of the jeep sued the State for not having posted signs which would have in effect prohibited the driver of the overtaking vehicle from passing. The case was tried to a judge and an advisory jury, since the statute has been interpreted as allowing the judge to empanel an advisory jury. It should be noted that when an advisory jury is empaneled, the expense to the State is just the same as if the trial was to a judge and an advisory jury was not used. The advisory jury found in the State's favor, but the judge decided, as he is entitled to do under the law, to disregard the verdict of the advisory jury and entered a verdict against the State.

I don't believe that there is any valid reason to believe that jurors would favor the State because of having an interest as taxpayers in the outcome of litigation against the State. There are jury trials in actions brought against Alaska cities where the taxpayer's interest is far more direct than in an action against the State and there has certainly been no indication that jurors tend to be lenient with Alaskan cities because the jurors are taxpayers.

Page Two

If the amendment allowing the State and litigants against it the right to a jury trial is passed, there will undoubtedly be individual cases in which the State is either hurt or helped by having the claims against it tried to a jury, but that is not the issue. I believe the issue is whether or not the State as well as litigants against the State have a right to a jury trial in litigation of this sort. I don't think there is any valid reason for giving the State any more or any less privilege than any other litigant in this regard.

Yours sincerely,


Howard Staley

HS/mh
Enc.

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA,)
)
 Petitioner,)
)
 v.)
)
 THOMAS I'ANSON and MAUREEN)
 I'ANSON,)
)
 Respondents.)
)
)

RECEIVED

DEC 13 1974

File No. 2032 MERDES, SCHAIKLE, STALEY & DeLISI

O P I N I O N

[No. 1102 - November 29, 1974]

Petition for Review from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Eben H. Lewis, Judge.

Appearances: Charles P. Flynn and Theodore M. Pease, Burr, Pease and Kurtz, Inc., Anchorage, for Petitioner. Harland W. Davis, Anchorage, Joel E. Bradshaw and Russell Newman, Newman & Bradshaw, Inc. P.S., Seattle, Washington, for Respondents.

Before: Rabinowitz, Chief Justice, Connor, Erwin, and Fitzgerald, Justices. [Boochever, Justice, not participating]

RABINOWITZ, Chief Justice.

This petition for review arises out of a bifurcated superior court trial in which the issue of petitioner State of Alaska's liability was tried to the superior court with the assistance of an advisory jury. The central contention in this petition focuses on construction of the discretionary function or

Duty exception to Alaska's Tort Claims Act.

The automobile collision which led to the liability trial occurred in May 1970 at approximately Mile 63 of the Seward Highway near the entrance to the Granite Creek Campground. Between 7:30 and 8 p.m. on the day of the accident, John Ward was driving his car in a southerly direction on the Seward Highway. In the vicinity of the Granite Creek Campground he observed ahead an old Jeep pickup traveling from 15 to 20 miles per hour in a southerly direction.² According to Ward's testimony, he then blinked his lights and pulled out to pass the Jeep pickup; just as he was about to pass, the driver of the Jeep pickup pulled across the road in front of Ward whose vehicle then collided with the left rear portion of the Jeep.

Respondent Maurcen I'Anson was a passenger in the Jeep pickup which was being driven by Andy DeBeau. DeBeau testified that just prior to the collision he was attempting a left turn into the entrance roadway of the Granite Creek Campground. DeBeau further testified that the Jeep did not have operative electric turn signals

1. AS 09.50.250 where applicable provides:

A person . . . having a . . . tort claim against the state may bring an action against the state in the superior court. . . . However, no action may be brought under this section if the claim

(1) . . . is an action for tort, and based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused

2. Ward testified that at this time he was travelling at 50 to 55 miles per hour.

and that he did not give a left turn hand signal, but he had "effectively" given a turn signal by pumping his brakes which in turn illuminated the Jeep's sole brake light which was located on the vehicle's left side. DeBeau admitted he observed Ward's vehicle approaching from the rear before he commenced the left turn. ←

As to the State of Alaska's liability for the collision and ensuing personal injuries sustained by respondent Maureen I'Anson, it was asserted that the state was negligent in failing to post a warning sign in advance of the entrance road to the Granite Creek Campground, and that the state should have placed no-passing striping between the crest of a slight rise north of the campground and the campground entrance roadway. The parties called expert witnesses who differed sharply over whether warning signs and no-passing zone striping should have been placed in the area immediately to the north of the entrance road to the Granite Creek Campground.

After hearing extensive testimony regarding the issue of liability, the advisory jury found in favor of petitioner State of Alaska. The trial judge in turn rejected the verdict of the advisory jury and entered findings of fact and conclusions of law resolving the issue of liability in respondents' favor. This petition followed.

Before treating the central question of whether highway signing and striping comes within the discretionary function or duty exception of AS 09.50.250, Alaska's Tort Claims Act, two minor issues will be dealt with.

Civil Rule 39(c) provides that:

In all actions not triable of right by a jury the court upon motion or of its own initiative may try an issue with an advisory jury or, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right. 5 /

It is established that the trial court has discretion whether or not to use an advisory jury. In the event one is used, it is entirely within the trial court's discretion to accept or reject, in whole or in part, the verdict of the advisory jury. On appeal from a trial conducted with an advisory jury, review is limited to the findings of fact and conclusions of law of the trial court as if there had been no verdict from the advisory jury. There can be no review of asserted errors relating to rulings before and instructions to an advisory jury. In light of these established principles, we do not reach petitioner's contention that the superior court erred in refusing to instruct the advisory

5. AS 09.50.290 provides that actions against the state under AS 09.50.250 "shall be tried by the court without a jury". *Lee v. State*, 490 P.2d 1206, 1208 (Alaska 1971).

Fed. R. Civ. P. 39(c), which parallels Alaska's Civ. R. 39(c), codifies the equity practice which permitted the court to summon an advisory jury to assist it in deciding a case. ⁹ *Wright & Miller, Federal Practice and Procedure* § 2335, at 124 (1971); *Kohn v. McNulta*, 147 U.S. 238, 37 L. Ed. 150 (1893).

6. *Chicago & N.W. Ry. Co. v. Minnesota Transfer Ry. Co.*, 371 F.2d 129 (8th Cir. 1967); *In re Pan-American Life Ins. Co.*, 188 F.2d 833 (5th Cir. 1951); *Cudmore v. Smith*, 260 F. Supp. 760 (D.C. Conn. 1966).

7. *Cox v. Babcock and Wilcox & Co.*, 471 F.2d 13 (4th Cir. 1972); *Mallory v. Citizens Util. Co.*, 342 F.2d 796 (2d Cir. 1965).

8. *Chicago & N.W. Ry. Co. v. Minnesota Transfer Ry. Co.*, 371 F.2d 129 (8th Cir. 1967); *Frostie Co. v. Dr. Pepper Co.*, 361 F.2d 124, 125 (5th Cir. 1966).

jury in accordance with its requested instruction regarding the "dangerous condition doctrine."

The second minor issue presented by this review proceeding involves two closely related assertions of error. In its original petition for preview, the State of Alaska claimed that the superior court not only improperly viewed the scene of the accident but erroneously conducted experiments at the accident site. In his memorandum decision, the trial judge wrote in part: ⁹

Certain facts evolved clearly from the testimony and were confirmed by a court view of the accident site and the approach to it from the north -- the direction from which the vehicles involved in the accident were traveling. . . .

. . . .

One observation by Thomas I'Anson in his testimony was confirmed by the court in taking a view of the scene. His statement was, substantially: 'You come over the hill and you are on it'. In approaching the scene at 50 miles per hour in a fairly heavy car equipped with good brakes, but without any special attempt to avoid an emergency situation, the court found that slowing from 50 miles an hour to a dead stop would be very difficult before reaching the campground entrance, in order to turn into it.

The subject of views by juries is governed by Civil Rule 48(c) which provides:

When the court deems proper, it may order a proper officer to conduct the jury in a body to view the property which is the subject of the litigation or the

9. Pursuant to Civ. R. 52(a), the superior court's memorandum decision was filed with the intent of satisfying the rule's requirement of formal findings of facts and conclusions of law.

conduct an impermissible experiment, this aspect of the case must necessarily be remanded in order to afford the parties an opportunity to develop the facts regarding both the alleged experiment by the court, and whether counsel were informed of and present during the court's carrying out of such experiment. On remand, the trial court should not only insure that the record reflects the relevant facts pertaining to the alleged experiment but should also indicate what weight, if any, was accorded the experiment in deciding the liability issue.

We now turn to the central issue in this review proceeding, namely, whether the placement of traffic signs and highway striping comes within the ambit of the discretionary function or duty exception of the Alaska Tort Claims Act. Counsel for petitioner

12. Professor McCormick writes:

On the other hand, where the trial judge is present to rule on admissibility, and provision for proper preparation of a proper record is made, there would appear no inherent vice in receiving testimony or allowing demonstrations or experiments during a view. These practices, however, have often been looked upon with disfavor by appellate courts, and some jurisdictions appear to hold reception of testimony or experiments during a view improper under any circumstances.

McCormick on Evidence § 216, at 538-39 (Cleary ed. 1972).

13. Our formulation of the question parallels that of respondents. Petitioner, on the other hand, views the issue as whether the State of Alaska can be held liable for negligent design of its highways contending that design is exempted under the planning discretionary exclusion of the Alaska Tort Claims Act.

In this court's order granting review in the instant case, we requested the parties to brief the questions of whether the placement of traffic signs could be characterized as a planning discretionary function, or as an operational function, and if operational, what standard of care was required of the State of Alaska and its agents or employees in the circumstances of this case.

view the question as one which was left unanswered by our opinion in State v. Abbott, 498 P.2d 712 (Alaska 1972). Respondents' counsel, on the other hand, view Abbott as controlling. To a large extent we are in agreement with respondents' position and begin with a review of the relevant portions of Abbott.¹⁴ In Abbott, we noted that the critical language in Alaska's Tort Claims Act, which establishes the discretionary function or duty exception of the State of Alaska's waiver of immunity, is identical to that contained in the Federal Tort Claims Act.¹⁵ Abbott then proceeded to review relevant federal case law on the subject of the discretionary function exception. Our discussion commenced with an analysis of Dalehite v. United States, 346 U.S. 15, 97 L. Ed. 1427 (1953). There the Supreme Court of the United States held that the federal government's decision to carry out a fertilizer export program without testing the explosiveness of the ammonium nitrate contained in the fertilizer was within the federal act's discretionary function exception. In so holding, Justice Reed, writing for the Court, first articulated the planning-operational test for resolution of scope of discretionary function

14. We recommend that the reader read in full Justice Erwin's incisive treatment of the subject of governmental immunity and the discretionary function or duty exception of both the Federal Tort Claims Act and Alaska's parallel legislation.

15. 28 USCA § 2680(a).

exception questions. In light of the "almost unanimous" adverse reaction of legal commentators to Dalehite and the limitations placed on the decision by subsequent federal decisions, we concluded that Dalehite was "now of questionable authority."¹⁷ Our evaluation of Dalehite was based in part upon analysis of Indian Towing Co. v. United States, 350 U.S. 61, 100 L. Ed. 48 (1955); Rayonier Inc. v. United States, 352 U.S. 315, 1 L. Ed. 2d 354 (1957);¹⁸ and Eastern Air Lines, Inc. v. Union Trust Co., 95 U.S. App. D. C. 189, 221 F.2d 62, aff'd per curiam, 350 U.S. 907, 100 L. Ed. 796 (1955). We also noted that due to the widespread belief that the Dalehite majority carried the discretionary function exception too far, Justice Jackson's dissenting opinion in Dalehite is quoted as often as is the majority opinion.¹⁹ Of particular significance is the fact that while we recognized that Justice Jackson "conceded there were many policy decisions of a

16. By way of dictum, Justice Reed wrote:

In short, the alleged negligence does not subject the government to liability. The decisions held culpable were all responsibly made at a planning rather than operational level. . . .

Dalehite v. United States, 346 U.S. 15, 42, 95 L. Ed. 1427, 1444 (1953).

17. State v. Abbott, 498 P.2d 712, 718 (1972).

18. In Rayonier the Supreme Court said in part that the Federal Tort Claims Act "was founded on the premise that it is preferable to spread the cost of governmental 'negligence' among all those who contribute financially to the government rather than allow the entire risk to fall on the injured party". Rayonier Inc. v. United States, 352 U.S. 315, 319-20, 1 L. Ed. 2d 358 (1957).

19. Reynolds, The Discretionary Function Exception of the Federal Tort Claims Act, 57 Geo. L.J. 81, at 95 (1968).

regulatory or governmental nature which should properly be 'controlled solely by the statutory or administrative mandate and not by the added threat of private damage suits'" he would not extend the discretionary function exception to "housekeeping" activities of the federal government. In this regard, Justice Jackson stated:

[T]here is no good reason to stretch the legislative text to immunize the Government or its officers from responsibility for their acts, if done without appropriate care for the safety of others. Many official decisions even in this area may involve a nice balancing of various considerations, but this is the same kind of balancing which citizens do at their peril and we think it is not within the exception of the statute. 21/

In Abbott, in addition to our discussion of federal case law, we emphasized several decisions of the Supreme Court of California in reaching the conclusion that "discretionary" acts should include only those made at the planning level, while decisions made at the operational or ministerial level should be actionable. In particular, we relied upon Johnson v. State, 73 Cal. Rptr. 240, 447 P.2d 352 (1968). There the court noted that almost any act involves some discretion, and therefore focused its inquiry on the policy behind the discretionary immunity doctrine. In so doing, the Johnson court recognized that

the very process of ascertaining whether

20. State v. Abbott, 498 P.2d 712, 718 (1972).

21. Dalehite v. United States, 346 U.S. 15, 60, 97 L. Ed. 1427, 1453 (1953).

an official determination rises to the level of insulation from judicial review requires sensitivity to the considerations that enter into it and an appreciation of the limitations on the court's ability to reexamine it. . . .

. . . Courts and commentators have therefore centered their attention on an assurance of judicial abstention in areas in which the responsibility for basic policy decisions has been committed to coordinate branches of government. Any wider judicial review, we believe, would place the court in the unseemly position of determining the propriety of decisions expressly entrusted to a coordinate branch of government. Moreover, the potentiality of such review might even in the first instance affect the coordinate body's decision-making process (emphasis in original) 24/

We take this occasion to reaffirm our adoption in Abbott of the planning-operational test, within an analytical framework which is sensitive to the policies underlying the discretionary function or duty exception of Alaska's Tort Claims Act. Act. In applying these analytical tools to the circumstances of the case at bar, we hold that the superior court did not err in refusing to extend the discretionary function exception to

22. Johnson v. State, 73 Cal. Rptr. 240, 248, 447 P.2d 352, 360 (1968).

In Abbott, we also noted that Professor Reynolds holds the view that the planning-operational distinction adequately serves what he regards as the main purpose of the discretionary function exception, namely: (1) The need to preserve separation of powers by limiting judicial re-examination of decisions made by the other branches of government; (2) the fact that courts are not equipped to investigate and balance all the factors that go into an executive or legislative decision; (3) the public interest in preventing the enormous and unpredictable liability that could result from judicial re-examination of the decisions of the other branches of government. Reynolds, note 19 supra at 121-23, 128-31.

petitioner. In the trial court, the questions in dispute turned on whether the state properly marked and striped a portion of the Seward Highway north of the Granite Creek Campground access road. In our view, functions of this nature do not involve broad basic policy decisions which come within the "planning" category of decisions which are expressly entrusted to a coordinate branch of government. We are further persuaded that resolution of questions such as whether or not the state properly striped or marked a portion of highway as it relates to the state's duty of care to users of the highway presents facts that courts are equipped to evaluate within traditional judicial fact-finding and decision-making processes.

24

Our decision is in accord with the holding and reasoning of the Supreme Court of Hawaii in Rogers v. State, 51 Hawaii 293, 459 P.2d 378 (1969). In Rogers, the state contended that its negligence in locating the road signs and restriping the center lines was not actionable under the discretionary function

23. In his memorandum decision, the trial judge wrote in part: "The defendant State has pled a defense that no cause of action was stated by the plaintiff in the claim under the Alaska Claims Act. While not specified by the State, I assume this is the discretionary function defense asserted in an earlier tort action against the State (AS 09.50.250). Inapplicability of this defense to tort claims involving operational level decisions was settled in State v. Abbott, 498 P.2d 712, 717-21 (Alaska 1972). No further discussion is required of this defense".

24. Inherent in our holding is the conclusion that no eroding of the separation of powers doctrine will result from a ruling that the functions in question are not within the ambit of the discretionary function exception of Alaska's Tort Claims Act.

exception of Hawaii's tort liability act. More particularly, the state contended that

discretion on the part of a State employee is involved in the placement of road signs and restriping of pavement in that road signs are placed after the district maintenance engineer has made a visual observation and has determined where and how they are to be placed, and center lines are restriped after the engineer has taken into consideration such factors as the geographical area involved, the amount of rain, and the volume of traffic in the area. 25 /

Justice Marumoto, writing for the Supreme Court of Hawaii, rejected the state's contention. After discussing the history of the Federal Tort Claims Act and federal decisional authority, Justice Marumoto wrote:

None of the cases mentioned above gave a precise definition as to what is meant by operational level acts. However, we may draft from the decisions in those cases, and others involving the discretionary function exception, a conclusion that operational level acts are those which concern routine, everyday matters, not requiring evaluation of broad policy factors. 26 /

Employing this definitional framework, the Supreme Court of Hawaii concluded that:

Here, such matters as the kinds of road signs to place and where to place them, and which center line stripings to repaint and when to repaint them, did not require evaluation of policies but involved implementation of decisions

25. Rogers v. State, 459 P.2d 378, 380 (Hawaii 1969).

26. Id.

made in everyday operation of governmental affairs. 27/

Admittedly, application of the Abbott "planning - operational" distinction regarding levels of decision-making involves delicate degrees of judgmental values. ²⁸ Although we recognize that it is not possible to articulate a rule which would provide more certainty, we remain convinced that the analytical approach adopted in Abbott is viable and will yield just results.

A second issue the parties were requested to brief related to the standard of care required of the State of Alaska. More particularly, this court asked what is the appropriate standard of care required of petitioner's agents in the event the placement of traffic signs and striping are held to be operational

27. Id. Compare Carroll v. State, Road Comm'n, 27 Utah 2d 384, 496 P.2d 888 (1972); Cameron v. State, 102 Cal. Rptr. 305, 497 P.2d 777 (1972).

In Carroll, the court concluded that

the decision of the road supervisor to use berms as the sole means of protection for the unwary traveler was not a basic policy decision essential to the realization or accomplishment of some basic governmental policy, program, or objective. His decision did not require the exercise of basic policy evaluation, judgment, and expertise on the part of the Road Commission. His determination may properly be characterized as one at the operational level of decision making
(footnotes omitted)

Carroll v. State, Road Comm'n, 27 Utah 2d 384, 496 P.2d 888, 891-92 (1972).

28. It appears that the Court of Appeals of Oregon would reach a different holding than we do in the instant case. Weaver v. Lane County, 499 P.2d 1351 (Ore. App. 1972).

functions rather than planning functions for purposes of the discretionary function exception to Alaska's Tort Claims Act. In response, petitioner State of Alaska has argued that "The State is to be judged by a standard of professional care in the same manner as a private engineer. To establish negligence on the part of the State or its agents, it is necessary to demonstrate professional malpractice". Respondents counter with the argument that the state's duty of care in the circumstances was established in State v. Abbott, 498 P.2d 712 (Alaska 1972). Again we find we are in agreement with respondents' position and think Abbott controlling.

In Abbott, we held that the state's duty of care to users of its highways "should be defined by ordinary negligence principles".²⁹ There we stated that the state "is not an insurer of the safety of motorists" and recognized that it is "the duty of highway authorities to exercise reasonable care to keep the highway in safe condition".³⁰ In deciding that this was the appropriate standard to employ, we were influenced by the fact that AS 09.50.250 "contains no indication that the legislature intended the state should be held to a lesser standard of care than private individuals";³¹ that AS 09.50.250 embodies a legislative decision in favor of risk-spreading; and that "While the negligence

29. State v. Abbott, 498 P.2d 712, 724 (Alaska 1972).

30. Id., 498 P.2d at 726, note 41, where case authorities from other jurisdictions adopting the same standard of care are collected.

31. Id., 498 P.2d at 724.

standard satisfies the strong public policy favoring compensation of individuls injured by the tortious conduct of the state, it is an extremely flexible standard, and consequently will not inhibit the vigorous and effective performance by the state of its duties in the way that a more rigid standard might".³²

We are unpersuaded that our adoption in Abbott of ordinary negligence principles as the appropriate standard of care owed by the State of Alaska to users of its highways should be either abandoned or modified. Therefore, we hold that the superior court did not err in following ordinary negligence principles in deciding the liability issues in the case at bar. Thus, the appropriate standard of care required of petitioner and its agents was to use reasonable care to keep the highway in a safe condition for the reasonably prudent traveler.³³

At trial the disputed issues concerning the state's

32. Id., 498 P.2d at 725. In this regard, Justice Erwin, writing for this court in Abbott, further elaborated:

Moreover, when the negligence standard is applied in conjunction with the policy-oriented interpretation of the discretionary function exception outlined in the previous section, the danger of excessive judicial interference with important decisions committed to the coordinate branches of government is avoided.

State v. Abbott, 498 P.2d 712, 725 (Alaska 1972).

33. Donnelly v. Ives, 159 Conn. 163, 268 A.2d 406, 408 (Conn. 1970); Martin v. State, Dep't of Highways, 175 So. 2d 441, 443 (La. 1965), where the court stated, "Generally it is the duty of the highway department to construct and maintain the highways . . . reasonably safe for a traveler himself exercising ordinary care; a highway will be deemed safe within these requirements if it may be negotiated successfully by all but the very reckless and careless drivers, there being no obligation to construct and maintain highways so as to insure the safety of such drivers".

alleged liability centered on whether or not the state should have placed a no-passing barrier stripe on the Seward Highway in the area leading up to the Granite Creek Campground entrance, and whether or not the state should have placed highway warning signs in advance of the campground roadway intersection with the Seward Highway.³⁴ Concerning the state's duty of care, AS 19.05.010 provides that the Department of Highways "is responsible for the planning, construction, maintenance, protection, and control of the state highway system". AS 19.05.130 defines the term "maintenance" in part to encompass the preservation and operation of "highway facilities and services to provide satisfactory and safe highways". AS 19.10.040 requires that "[t]he department shall classify, designate and mark highways under its jurisdiction and shall provide a uniform system of marking and posting these highways. The system of marking and posting shall correlate with and shall, as far as possible, conform to the recommendations of the Manual on Traffic Control Devices as adopted by the American Association of State Highway Officials".³⁵ At the time of the

34. More specifically, it was asserted that the State of Alaska was negligent in failing to place a yellow "no pass" barrier stripe, preventing southbound vehicles from legally passing, at the entrance of the Granite Creek Campground, and for an appropriate distance north.

35. AS 19.10.050 provides that:

The department shall prescribe types of traffic control signals to regulate traffic on highways. These signals shall correlate with and, as far as possible, conform to the recommendations of the Manual on Uniform Traffic Control Devices as adopted by the American Association of State Highway Officials. The department shall prescribe uniform rules for the placing and installation of traffic control signals.

accident in question, the 1961 Uniform Manual of Traffic Control Devices provides in Section 2B-7 that:

No-passing zones shall be established at vertical and horizontal curves and elsewhere on two and three lane highways where passing must be prohibited because of dangerously-restricted sight distances or other hazardous conditions.

During the trial the bulk of the professional engineering testimony received went to the issue of whether or not the entrance roadway to the Granite Creek Campground was an "other hazardous condition" within the ambit of Section 2B-7, although other theories of liability were advanced and evidence produced relating thereto by respondents. ³⁶ All of which bring us to another aspect of the proceedings below which is raised by our review of the superior court's decision.

In his memorandum decision, the trial court concluded in part "that the State was negligent in failing, as a safety minimum, to provide a yellow no-pass barrier stripe on the Seward Highway, from the present southerly terminus of the existing barrier stripe about 663 feet to the north, and continuing south past the entrance

36. The trial court found it "immaterial that a no-passing banner stripe appears once to have been in existence along the stretch of road where the accident occurred. It is also of little materiality to determine that, at the time of the accident, the junction of the campground with the Seward Highway be determined an 'intersection'".

to the Granite Creek Campground. This negligence was a legal cause
of plaintiffs' damages." ³⁷

Study of the court's memorandum decision indicates that the trial judge found the following "facts" furnished the basis for his conclusions: John Ward could have stopped his vehicle before striking DeBeau's jeep, if he had known DeBeau was going to turn left; that Ward would not have pulled out if there had been a no-pass barrier stripe or a "do not pass" sign; ³⁸ and that "the narrow road and lack of shoulder gave him no safe electives in evading the collision when he was committed to his pass, and it was too late to stop. He should not have been permitted to

37. In an order entered subsequent to its memorandum decision, the superior court implemented and amended its findings of fact and conclusions of law in part by stating that

the Court's decision was not based on dangerously restricted sight distance within the meaning of Sections 2b-7 and 2b-10 of the Manual of Uniform Traffic Control Devices [and] that the stopping sight distance of the junction of the Granite Creek Campground roadway and the Seward Highway was not a basis for the court's decision.

38. The trial judge also found that "If there had been a 'T' intersection sign, he would have passed, but would have travelled more slowly".

attempt a 'flying pass' at this location".

Civil Rule 52(a) requires that in a nonjury trial or in an action tried with an advisory jury, the "Court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment". In applying this rule, we have consistently said that it is the trial court's duty under this rule to make findings sufficient to give a clear understanding of the basis of its decisions in order to enable intelligent review on appeal. ⁴⁰ Although the trial court's findings of fact and conclusions of law embodied in its memorandum decision probably satisfy the requirements of Civil Rule 52(a) and the judicial construction this rule has received, we deem it

39. In reaching this conclusion, the trial court gave particular emphasis to the testimony of two of respondents' expert witnesses. In his memorandum decision, the trial judge wrote in part:

It was the testimony of the expert witness Cysewski, who testified . . . that the circumstances at the accident scene, including the configuration of the road and the traffic control markings, encouraged an overtaking driver to make in effect an illegal pass in too short a space of time and space. In other words, Mr. Cysewski testified, the driver was entrapped by the circumstances.

. . . Mr. Bishop, a traffic engineer . . ., testified that the existence of the free passing zone beginning at the crest of the hill, 633 feet to the intersection, placed the driver of the passing vehicle within a dangerous condition, as he would have to complete his pass over a distance of 516 feet, otherwise he will be in the intersection during his pass.

40. Morrison v. State, 516 P.2d 402, 407 (Alaska 1973); Abbott v. State, 498 P.2d 712, 730 (Alaska 1972); Beaulieu v. Elliott, 434 P.2d 665, 670 (Alaska 1967); Patrick v. Sedwick, 413 P.2d 169, 174-75 (Alaska 1969); Hamilton v. Lotto, 391 P.2d 948, 949 (Alaska 1964).

appropriate on remand to afford the trial court the opportunity of making more detailed findings of fact pertaining to the negligence of the state, causation, and whether either or both of the parties to the collision failed to act in a reasonably prudent manner, and if they did, whether such conduct affects in any manner the state's liability in the circumstances of the case. 41

Affirmed in part and remanded for further proceedings in accordance with this opinion.

41. Earlier we held that a remand is necessary in order to permit the parties and the trial court to develop the record pertaining to the court's view of the accident scene and carrying out an experiment. In this regard, we deem it advisable for the trial court to indicate not only what weight it accorded the results of any experiment conducted but also to review its memorandum decision in order to make any modifications necessitated by its supplemental findings regarding the view and experiment.

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1/21/75

COMMITTEE REPORT

HOUSE

Mr. Speaker:

Date Jan 31, 1975

The Committee on Judiciary has had 50

under consideration. A Majority of the members of the Committee

() recommends it DO PASS

() recommends it DO NOT PASS

() recommends it DO PASS WITH ATTACHED AMENDMENT(S)

() recommends it BE REPLACED WITH CS FOR CS 387 AND THAT

CS FOR CS 387 DO PASS

() "and" recommends it BE REFERRED TO THE _____

COMMITTEE

() reports it back WITHOUT RECOMMENDATION

() "other"

Members signing the Majority report:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

S B

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COMMITTEE REPORT

3/24/75

HOUSE

Mr. Speaker:

Date 4/1/75

The Committee on JUDICIARY has had CS 96 am

under consideration. A Majority of the members of the Committee

() recommends it DO PASS

() recommends it DO NOT PASS

() recommends it DO PASS WITH ATTACHED AMENDMENT(S)

() recommends it BE REPLACED WITH CS FOR _____ AND THAT

CS FOR _____ DO PASS

() "and" recommends it BE REFERRED TO THE _____

COMMITTEE

() reports it back WITHOUT RECOMMENDATION

() "other"

Members signing the Majority report:

<u>[Signature]</u>	<u>[Signature]</u>	<u>[Signature]</u>
<u>[Signature]</u>	<u>[Signature]</u>	<u>[Signature]</u>
<u>[Signature]</u>	<u>[Signature]</u>	<u>[Signature]</u>
<u>[Signature]</u>	<u>[Signature]</u>	<u>[Signature]</u>

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

[Signature] Chairman

Original sponsor: Hohman

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 96 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the sale of subsistence caught
7 salmon eggs."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. INTENT. (a) It is the intent of sec. 2 of this Act to
10 permit the sale or trade of salmon roe under strict permit and regulatory
11 provisions to assure the health of subsistence economies in areas where such
12 use will not jeopardize or interfere with the maintenance of existing salmon
13 stocks.

14 (b) It is the intent of sec. 3 of this Act to control the waste of
15 salmon resources.

16 * Sec. 2. AS 16.05 is amended by adding a new section to read:

17 Sec. 16.05.827. SALE OF SUBSISTENCE SALMON ROE. (a) Notwith-
18 standing 940(17) of this chapter, the board may adopt regulations
19 permitting the sale of subsistence salmon roe under conditions the board
20 considers advisable.

21 (b) The board may permit subsistence salmon roe sales under (a) of
22 this section if

23 (1) the accustomed contribution of salmon to particular sub-
24 sistence economies will be maintained, as modified by current needs; and

25 (2) subsistence salmon roe sales will not jeopardize or
26 interfere with the maintenance of salmon stocks on a sustained yield
27 basis.

28 (c) No person may purchase or trade for or attempt to purchase
29 or trade for subsistence salmon roe unless he possesses an annual permit

1 issued by the commissioner. The commissioner may specify terms and
2 conditions of a permit required under this section. No license, entry
3 permit or interim permit is required for the specific act of selling
4 subsistence salmon roe. No person may purchase or transport or attempt
5 to purchase or transport salmon roe which he knows or has reason to know
6 was taken in violation of this section or regulations adopted under it.

7 (d) If the commissioner finds that sale of subsistence salmon roe
8 is resulting in waste of salmon carcasses, damage to salmon stocks, or
9 circumvention of salmon management programs, he may close any or all
10 areas to subsistence salmon roe sale by emergency order. If the com-
11 missioner finds that the subsistence catch in an area exceeds or is
12 likely to exceed, by 10 per cent, the 1974 subsistence catch for that
13 area, he shall close that area to subsistence salmon roe sale by emer-
14 gency order.

15 (e) Original purchasers of subsistence salmon roe shall record
16 information required by the department on fish tickets supplied by the
17 department.

18 (f) The board may adopt regulations it considers necessary for the
19 administration of this section. The board may delegate its authority
20 under this section to the commissioner.

21 (g) A person who violates this section or a regulation adopted
22 under it is subject to a fine of not more than \$10,000, or imprisonment
23 for not more than six months, or both.

24 (h) In this section, "subsistence salmon roe" means salmon roe
25 incidentally obtained as an unavoidable by-product of lawful subsistence
26 fishing.

27 * Sec. 3. AS 16.05 is amended by adding a new section to read:

28 Sec. 16.05.831. WASTE OF SALMON. (a) It is unlawful for a person
29 to waste salmon intentionally, knowingly, or with reckless disregard for

1 the consequences. In this section, "waste" means the failure to utilize
2 the majority of the carcass, excluding viscera and sex parts, for
3 salmon which are to be

4 (1) sold to a commercial buyer or processor;

5 (2) utilized for consumption by humans or domesticated
6 animals; or

7 (3) utilized for scientific, educational, or display purposes.

8 (b) The commissioner may authorize other uses of salmon upon
9 request if he finds that to do so would be consistent with maximum and
10 wise use of the resource.

11 (c) A person who violates this section or a regulation adopted
12 under it is subject to a fine of no more than \$10,000, or imprisonment
13 for ~~not more~~ ^{up to} than six months, or both. In addition, a person ^{who is financially} who vio- ^{capable}
14 lates this section is subject to a civil action by the state for the
15 cost of replacing the salmon wasted.

16 * Sec. 4. Sections 1(a) and (2) of this Act expire January 1, 1977.
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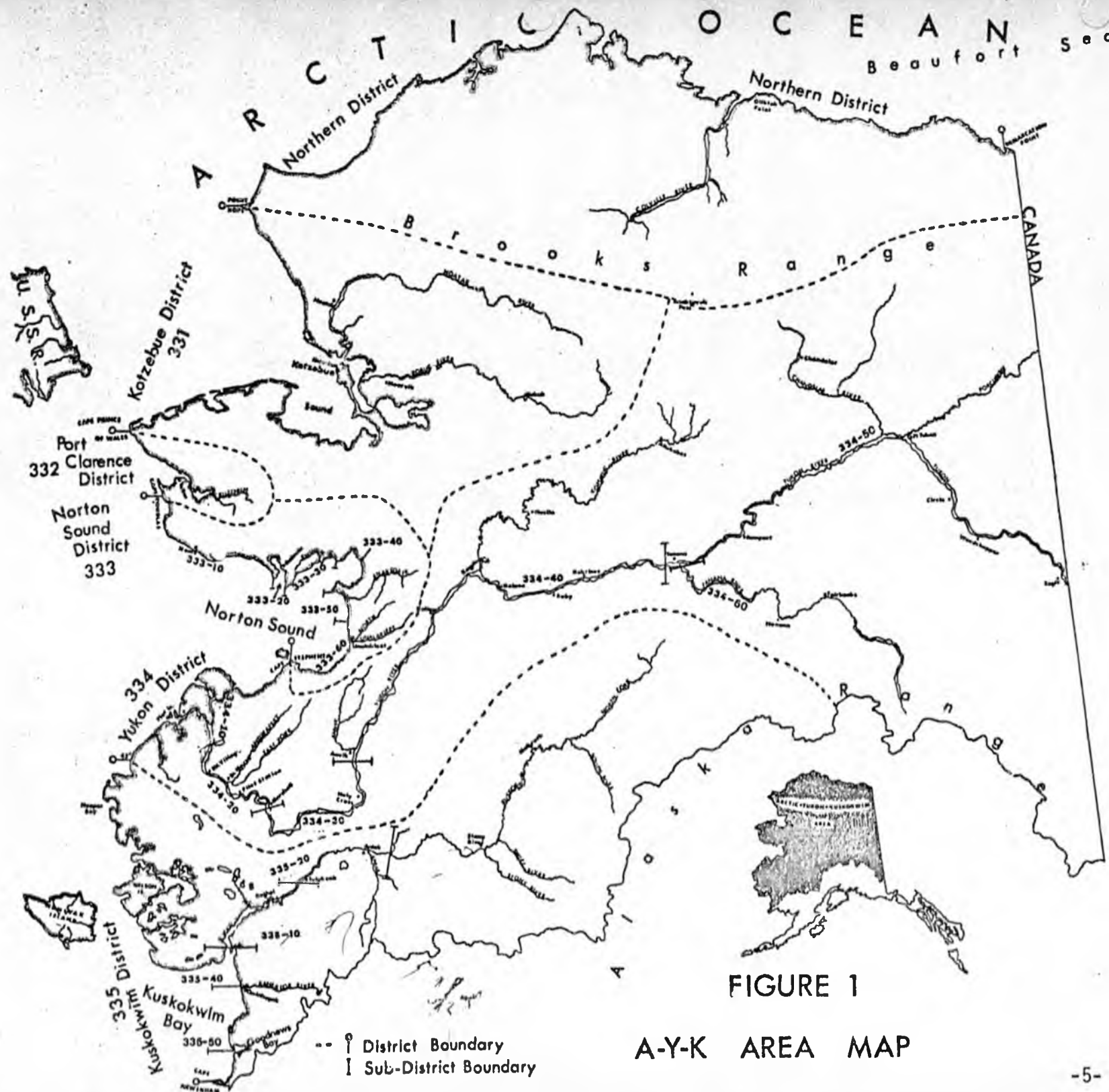


FIGURE 1

A-Y-K AREA MAP

The 1974 commercial catches made in each management area are shown below:

<u>Area</u>	<u>King</u>	<u>Red</u>	<u>Coho</u>	<u>Pink</u>	<u>Chum</u>	<u>Total</u>
Kuskokwim	30,700	29,000	179,300	60,000	196,100	495,100
Yukon	96,900		16,800		877,400	991,100
Norton Sound	2,500		1,800	147,900	149,800	302,000
Kotzebue					631,200	631,200
Totals, 1974	<u>130,100</u>	<u>29,000</u>	<u>197,900</u>	<u>207,900</u>	<u>1,854,500</u>	<u>2,419,400</u>
Previous season record	161,500	13,500	174,500	147,000	1,196,700	1,576,100
5-year average (1969-72)	148,800	8,800	96,300	56,000	717,200	1,026,000

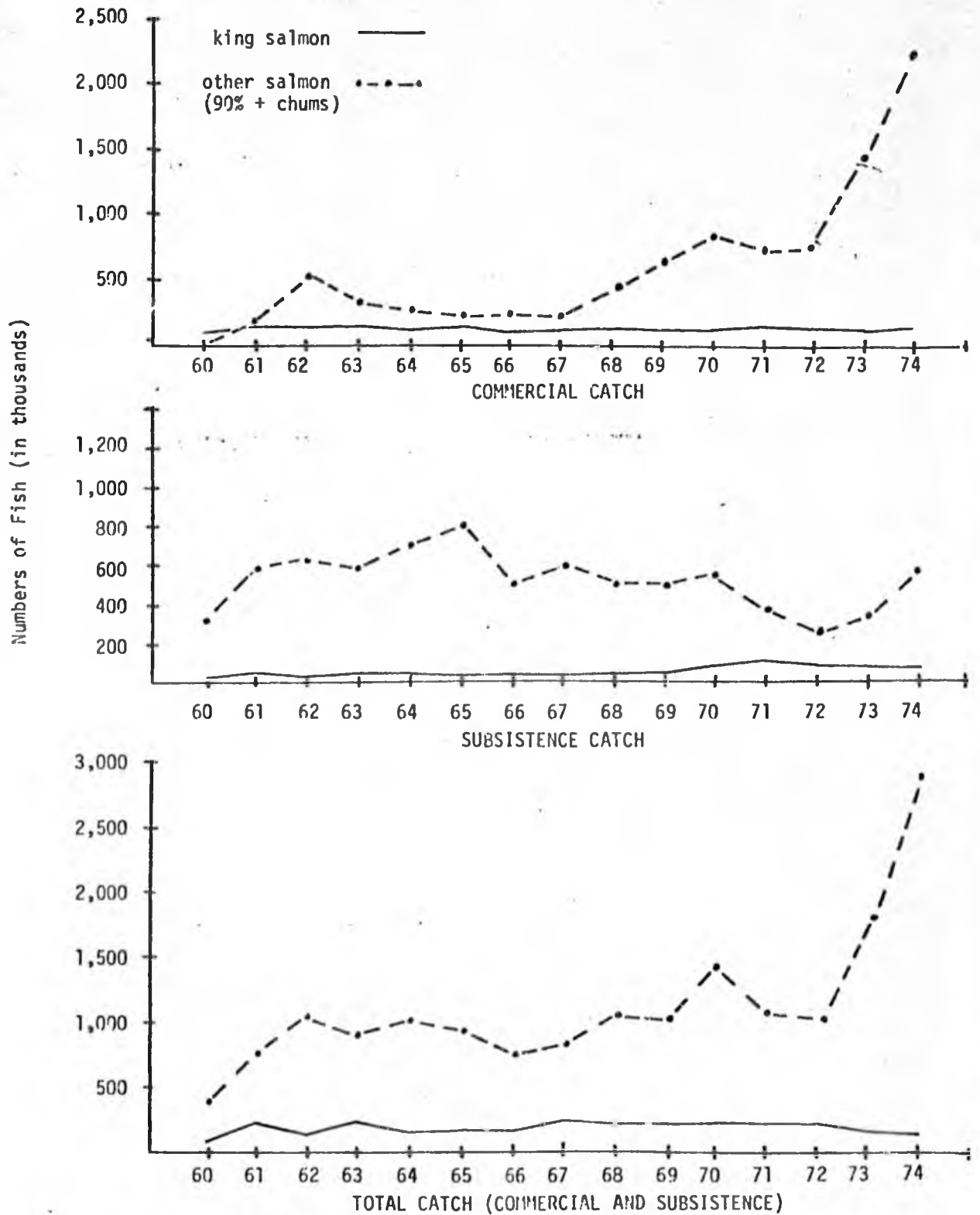
Commercial harvests in the region have increased about thirty times since 1960. Recent increases have been largely due to development of chum salmon fisheries in the Yukon River, Kuskokwim River and Kotzebue areas.

The region-wide license registration in 1974 of 2,685 commercial, 2,042 vessel and 2,285 gear licenses was a record high total. License registration in the region increased at a rate of about 6 percent annually during the 1968-72 period. In 1973, the rate increase over the previous year was 15 percent for vessel and 12 percent for gear licenses. In 1974 vessel and gear license registration increased 24 and 16 percent respectively over that for 1973. Most of this increase was in the Kuskokwim and Kotzebue areas. This expansion is largely the result of increasing numbers of subsistence fishermen who are beginning to also participate in the commercial fishery. The vast majority of commercial fishermen are Eskimo and Indian residents of the region.

Trends in license registrations and commercial harvests in the region during 1960-1974 are illustrated in Figure 2.

Figure 3 shows commercial, subsistence and total catches of king and other salmon species made in the region during 1960-1974:

Figure 3. Commercial, subsistence and total catch in numbers of salmon for the Arctic-Yukon-Kuskokwim region, 1960-1974.



SALE OF ROE FROM SUBSISTENCE-CAUGHT SALMON
IN THE ARCTIC-YUKON-KUSKOKWIM REGION, 1974

Background

In years past when native people were experiencing a pure subsistence type of livelihood, all or nearly all portions of fish captured were probably utilized. Salmon roe was consumed by people with probably greater quantities fed to their sled dogs. Due to recent changes in employment and welfare opportunities, there has been a gradual decline in the dependence upon subsistence fishing. Replacement of the sled dog with the snowmachine has had a very significant effect in regards to utilization of chum salmon and roe. From reports received from various village residents, much of the roe taken from subsistence caught salmon in recent years was discarded. The amount of salmon roe discarded or not utilized has never been documented by the Department. There is no question that wastage of salmon roe was and is occurring, but the Department has been unable to quantify the amount.

There are many problems involving the documentation of the amount of roe utilized and/or wasted in the subsistence fishery. It is believed that some native fishermen continued to store or dry their salmon roe with the intention of some future use, but significant amounts may never be used. With regards to wastage, most fishermen would be hard pressed to quantify the amount of roe retrieved from their salmon catch, the amount consumed or the amount wasted.

Beginning with the 1973 season, nearly all commercial salmon buyers in the Kuskokwim area and a few buyers in the upper Yukon area augmented their roe production to some extent from subsistence channels. It was estimated, for example, that illegal sales of subsistence roe in 1973 represented

10-15 percent of the reported commercial roe production in the Kuskokwim area. Illegal sale of salmon roe from subsistence caught salmon was not a problem in the remainder of the region during 1973.

Three different bills were introduced in last year's Legislature that involved legalization of the sale of subsistence caught salmon roe. None of these bills passed as they remained in committee through adjournment.

Department staff members have discussed the issue of subsistence roe sales with A-Y-K region fishermen on many occasions, most recently during spring and fall public meetings. Most A-Y-K fishermen are in favor of legalizing these sales for the following reasons: (1) There is no other use for the roe; (2) Roe sales would provide extra income for wives and children of fishermen.

In the spring of 1974 it was apparent that several buyers were gearing up to purchase even larger amounts of subsistence roe. Both the Departments of Fish and Game and Public Safety assigned additional personnel for fishery patrol in an attempt to minimize the illegal sale of subsistence roe. The major thrust of the enforcement program was increased surveillance of buying and processing stations. News releases and notices were issued to clarify existing regulations.

An emergency regulation with an effective date of June 15, 1974 was issued by the Commissioner which allowed the sale of subsistence salmon roe in the A-Y-K region. Issuance of the emergency regulation was coincidental with the beginning of the salmon runs. A copy of this emergency regulation is attached as Appendix I.

This emergency regulation was in effect for 120 days or until October 13, 1974. Therefore, the sale of subsistence roe is presently illegal and will

continue so through the 1975 season unless changed by further regulation and/or legislation.

All buyers filing Intent to Operates for the A-Y-K region in 1974 were sent a letter notifying them of the emergency regulation. This letter also contained instructions for documenting subsistence roe data on fish tickets. In addition to most information required on regular fish tickets, the number of roe skeins and pounds of roe by species was required.

A-Y-K Regional Summary, 1974 Season

Table 1 presents volume, value, numbers of fishermen and estimated numbers of salmon harvested associated with the sale of subsistence roe for each management area. In 1974, a total of 182,428 pounds of roe was sold, bringing fishermen an estimated \$216,940 in earnings. The estimated first wholesale value of this production was \$550,000. A subsistence harvest of 432,766 salmon was derived from the volume of roe sold.

By comparison, approximately 422,000 pounds of processed salmon roe was reported as commercial production in 1973. This included a small undetermined volume of illegal subsistence roe. Commercial roe production for 1974 is not yet available.

The majority of the subsistence roe came from the Kuskokwim area (73 percent by weight) and the upper Yukon area (26 percent by weight). A small amount was sold in the vicinity of Nome in the Norton Sound area. No sales of subsistence roe were recorded in the following locations: (1) Norton Sound area (except Nome); (2) Kotzebue area including Kobuk and Noatak Rivers; (3) Upper Kuskokwim River drainage upstream from Kalskag; (4) Koyukuk, Chandalar and Porcupine drainages of the Yukon River; (5) Upper Yukon River drainage upstream from Stevens Village.

Table 1 . Subsistence salmon roe sales data, A-Y-K Region, 1974.

	Kuskokwim Area	Yukon Area ^{1/}	Norton Sound Area	Totals
<u>Pounds of raw product</u>				
King	34,581	468	249	35,298
Chum	<u>98,602</u>	<u>46,901</u>	<u>1,627</u>	<u>147,130</u>
Total	133,183	47,369	1,876	182,428
<u>Number of fishermen</u>	1,438	186	-	-
<u>Value to fishermen</u>	\$180,000	\$35,533	\$1,407	\$216,940
<u>Average value/fisherman</u>	\$125	\$191	-	-
<u>Nos. of fish estimated from roe poundages</u> ^{2/}				
King	20,342	283	150	20,775
Chum	<u>313,024</u>	<u>93,802</u>	<u>5,165</u>	<u>411,991</u>
Total	333,366	94,085	5,315	432,766

1/ Minimum poundages as sale of roe from subsistence caught salmon by licensed commercial fishermen not included.

2/ Based on sex ratios of 1:1 and average roe wts/fish of 3.4 lbs. for Kuskokwim and Norton Sound kings; 3.3 Yukon kings; .63 Kuskokwim and Norton Sound chums; 1.0 Yukon chums.

Kuskokwim Area, 1974 Season

Tables 2 through 5 show volumes of subsistence roe sold in each sub-district. Estimates of the subsistence harvests were derived from these sales and this information is also included in the above tables. Numbers of persons in each village selling subsistence roe are shown in Table 6.

Within the first two days of legalized sales, more than 2,300 pounds of subsistence roe were sold. Sales increased until a peak of more than 40,000 pounds were purchased during the week of June 17-23. By mutual agreement, the major buyers ceased active recruitment of subsistence roe after July 27. The reason given for this was that further roe sales may have resulted in discarding of carcasses due to the large subsistence catches made by that date.

A total of 5,616 separate sales of subsistence roe was made by 1,438 persons. A total of 34,581 pounds of king salmon roe and 98,602 pounds of chum salmon roe totaling 133,183 pounds was sold. The vast majority of these sales or 122,173 pounds occurred in subdistrict 1 (lower Kuskokwim River) with lesser amounts occurring in subdistrict 2 (middle Kuskokwim River), subdistrict 4 (Quinhagak) and subdistrict 5 (Goodnews Bay).

Estimated value of subsistence roe to the fishermen was \$180,000 for an average of \$125/fisherman. Roe prices ranged from \$1.25-\$1.50 per pound with greater prices paid for chum salmon roe. The first wholesale value of the subsistence roe pack was estimated at \$400,000. The major buyer/processor realized a value of \$270,000.

Numbers of salmon were "back calculated" from reported subsistence roe poundages. Therefore, estimates of the subsistence harvest were made as the season progressed. These derived catches represent minimum figures as all roe from subsistence caught salmon was probably not sold. These calculations

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

ated that a minimum of 20,336 king and 313,024 chum salmon were captured in the vast majority taken in the Kuskokwim River. These estimates are similar to catches obtained from an independent survey of the subsistence fishery which has been made annually since 1960. It was apparent that by early 1974, the estimated Kuskokwim River subsistence chum salmon harvest had surpassed the 1973 harvest and was one of the largest harvests made since 1960.

Numerous reports were received of discarded carcasses, but the staff was able to document only one such case involving 300-500 carcasses. Roe from a single chum salmon was worth about \$.95 compared to \$1.25-\$1.50 for the carcass when sold in the usual commercial channels. Therefore the incentive to sell roe and discard the carcass was always present. There is no "wanton waste" provision for either commercial or subsistence fishing and violators cannot be cited or prosecuted.

Another more subtle form of wastage was brought to the Department's attention by some fishermen. Although the vast majority of fishermen preserve their subsistence catches, the magnitude of some catches will prevent them from using all the fish before next spring when the remaining fish are likely to be disposed of.

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

Table 2 . Subsistence salmon roe sales data by subdistrict, Kuskokwim area, 1974.

Subdistrict	Kings		Chums	
	Pounds of Roe	Est. Nos. of Fish	Pounds of Roe	Est. Nos. of Fish
335-10	28,530	16,782	93,643	297,280
335-20	3,932	2,312	4,861	15,432
335-40	1,631	960	93	296
335-50	488	282	5	16
TOTAL	34,581	20,336	98,602	313,024

Table 4. Subsistence roe data, Kuskokwim River chums, 1974

Date	Roe Sales in Pounds		
	335-10	335-20	Total
6/10 - 6/16			
6/17 - 6/23	395	28	420
6/24 - 6/30	30,444	1,485	31,929
7/1 - 7/6	30,137	642	30,779
7/7 - 7/13	22,567	531	23,098
7/14 - 7/20	9,474	471	9,945
7/21 - 7/27	626	1,704	2,330
TOTALS	93,643	4,861	98,504

Estimates of Numbers of Salmon ^{1/}

335-10	$\frac{93,643 \text{ lbs. roe}}{0.63 \text{ lbs. female}}$	=	148,640 Females 148,640 Males <hr/> 297,280 Chums
335-20	$\frac{4,861 \text{ lbs. roe}}{0.63 \text{ lbs. roe/female}}$	=	7,716 Females 7,716 Males <hr/> 15,432 Chums
TOTAL			<hr/> 312,712 Chums

^{1/} Based on average roe weight per female of .63 lbs and 1:1 sex ratio.

Table 5 . Subsistence roe data, Quinhagak and Goodnews Bay, 1974.

	Pounds of Roe	
	subdistrict 4 (Quinhagak)	subdistrict 5 (Goodnews Bay)
King	1,631	488
Chum	<u>93</u>	<u>5</u>
Total	1,724	493

Estimates of Numbers of Salmon ^{1/}

Quinhagak:	<u>1,631 lbs. roe</u>	=	480 Females
	3.4 lbs. roe/female		<u>480 Males</u>
			960 Kings
	<u>93 lbs. roe</u>	=	148 Females
	.63 lbs. roe/female		<u>148 Males</u>
			296 Chums
Goodnews Bay:	<u>488 lbs. roe</u>	=	141 Females
	3.4 lbs. roe/female		<u>141 Males</u>
			282 Kings
	<u>5 lbs. roe</u>	=	8 Females
	.63 lbs. roe/female		<u>8 Males</u>
			16 Chums

^{1/} Based on average roe weight per female of 3.4 lbs for kings and .63 lbs for chums; 1:1 sex ratio.

Table 6 . Numbers of people by village that sold roe from subsistence caught fish, Kuskokwim area, 1974.

Village	No..of People	Percent
Kwigillingok	3	0.3
Kipnuk	2	0.2
Kongiganak	3	0.3
Tuntutuliak	45	5.0
Chefornak	1	0.1
Eek	50	6.3
Chuathbaluk	3	0.3
Kasigluk	3	0.3
Nunapitchuk	9	1.0
Atmauthluak	2	0.2
Napakiak	52	5.5
Oscarville	35	3.7
Napaskiak	88	9.4
Bethel	158	16.8
Kwethluk	163	17.4
Akiachak	84	8.9
Akiak	68	7.2
Tuluksak	27	2.9
Kalskag (Urper & Lower)	32	3.4
Aniak	42	4.5
Quinhagak	59	6.3
Subtotal	939	100.0
Village not entered on fish ticket	499	
TOTAL	1,438	

Yukon Area, 1974 Season

Table 7 presents subsistence roe sales data for each subdistrict. There was 468 pounds of king salmon roe and 46,901 pounds of chum salmon roe totaling 47,369 pounds sold by 186 fishermen. The majority of these sales were made by subsistence fishermen (not commercially licensed) and a few licensed commercial fishermen that fished for subsistence after the close of the commercial season.

An unknown amount of subsistence roe was included with the "commercial production" which totaled 36,766 pounds (2,184 pounds king roe, 34,582 pounds chum roe) in subdistricts 4, 5 and 6. This was roe sold by commercial fishermen from fish captured during weekly closures of the commercial fishery. Therefore, the subsistence roe poundages represent minimum figures.

The documented 47,369 pounds of subsistence roe sales earned fishermen about \$35,500 or an average of \$191 per fisherman. A total of 16 buyers purchased subsistence roe that had an estimated first wholesale value of \$142,000. The major buyer/processor in the area realized an estimated first wholesale value of \$93,000 from subsistence roe.

There were no sales of subsistence roe in subdistrict 1 and only 239 pounds in subdistrict 2. Nearly all the fishermen in these two subdistricts are commercial fishermen and in addition, subsistence fishing is prohibited during weekly commercial fishing closures.

The greatest amounts of subsistence roe was sold in subdistrict 4 which also had the greatest number of participants. Relatively small amounts were sold in subdistricts 3 and 5 probably due to the remoteness of most fishermen precluding regular tendering by buyers.

It is difficult to assess the impact of allowing the sale of subsistence caught salmon roe on the Yukon River fishery. Preliminary 1974 figures indicate that in excess of 271,000 salmon were taken for subsistence. This is a 30 percent increase over the 1973 harvest and a 28 percent increase over the previous 5-year annual average harvest. The sale of subsistence caught roe and a large summer chum salmon run were probably both contributing factors to the large subsistence harvest in 1974. Also, the river was low and fishing conditions were judged excellent.

Subsistence roe poundages were entered on fish tickets but could not always be separated from roe sold by commercial fishermen (either from commercially captured fish or from fish taken for subsistence during commercial fishing closures). Some of the subsistence roe was not identified as to species on fish tickets.

There were no documented instances of fish being taken for roe only and the carcasses being discarded although there were unsubstantiated reports of this occurring in the Anvik-Grayling area. It is likely that some individuals engaging in the sale of subsistence roe this season captured salmon in excess of their needs.

Table 7. Subsistence salmon roe sales data, Yukon area, 1974

Subdistrict	Pounds of Roe			No. of Fishermen	Value to Fishermen	Estimated Nos. of Salmon ^{1/}		
	King	Chum	Total			King	Chum	Total
1								
2		239 ^{2/}	239 ^{2/}	10	\$179		478	478
3		4,103 ^{1/}	4,103 ^{1/}	25	\$3,077		8,206	8,206
4	51	23,493	23,544	91	\$17,665	31	46,986	47,017
5	238	3,282	3,520	36	\$2,640	144	6,564	6,708
6	179	15,784	15,963	24	\$11,972	108	31,568	31,676
TOTAL	468	46,901	47,369	186	\$35,533	283	93,802	94,085

^{1/} Based on average roe weights of 3.3 lbs for kings and 1.0 lbs for chums and 1:1 sex ratios.

^{2/} Species not identified by buyers; assumed to be all chums.

Discussion

Traditionally, the subsistence salmon fishery was naturally limited by the personal food requirements and the numbers of salmon that could be handled in a day and hung to dry or smoke during the season. These restraints do not apply to a commercial fishery where the profit motive is paramount.

A possible consequence resulting from the authorization of sale of subsistence caught salmon roe is that the concept and future direction of subsistence fishing may be permanently altered. Present subsistence fishing regulations in the A-Y-K Region are quite liberal which is in recognition of the traditional personal needs of the large native population. If the sale of subsistence caught salmon roe is permanently authorized and subsistence fishermen begin making harvests in excess of recent traditional levels, then a new management strategy must be developed. There are two main options to pursue in this event, i.e., restricting the subsistence harvest or restricting the commercial harvest to bring the total harvest in line with optimum sustained yield. If subsistence fishing requires further restriction, many persons with genuine subsistence needs will be adversely affected by others who are much less dependent on a subsistence livelihood, but continue to fish mainly for the purpose of selling roe.

Another consideration is that the monetary value of such a fishery in terms of local economy should greatly exceed the cost of establishing and monitoring the fishery. In some areas the reverse will be true.

The effect of allowing the sale of subsistence roe on the 1974 subsistence fishery remains unclear. Kuskokwim and Yukon River subsistence chum salmon catches were significantly larger than recent year levels. Both the large salmon run and increased effort due to the opportunity to sell roe

were probably factors contributing to the large subsistence harvests in 1974.

If the sale of subsistence roe is authorized for the 1975 season, it should be more rigidly controlled similar to any commercial enterprise and only authorized initially in relatively few areas.

Several options involving greater control seem worthy of discussion and include the following:

1. If the sale of roe from subsistence caught fish is authorized, it should pertain only to salmon. There will be more than enough problems involved with these species without the inclusion of the entire fishery fauna of the A-Y-K Region. Also, only the salmon resource is sufficiently abundant to withstand commercial utilization in addition to subsistence fishery requirements.

2. A new regulation or statute defining wanton waste of fish and establishing fines or penalties should be promulgated. The suggested wording would be similar to the statute referring to waste of wild animals (16.30.010.) "a person who intentionally captures fish for any purpose and does not make a reasonable attempt to utilize most of the usable flesh, excluding the viscera and sex products, for human and animal consumption is guilty of a misdemeanor and upon conviction, is punishable by a fine of not more than \$500 or by imprisonment for not more than six months or by both." Care must be taken in the wording of this so that the discarding of roe, viscera, etc., is not in violation of the newly written law or regulation. Large-scale discarding of the fish carcasses merely for the sale of the roe cannot be tolerated and any authorized sale of subsistence caught roe would be prohibited by emergency order during the season in this event.

3. The sale of roe from subsistence caught salmon should be allowed only in areas presently open to commercial fishing. This would prevent the

expansion of subsistence fishing solely for salmon roe and would protect spawning areas from this practice. Also, by confining this practice to present commercial fishing areas, the Department staff can better monitor the fishery and enforce associated regulations. This would prohibit the sale of roe from subsistence caught fish in all spawning areas throughout the region and all tributary streams of the Kuskokwim and Yukon Rivers except the Tanana River below its confluence with the Chena River. Most of the areas excluded can be characterized by (1) remoteness and (2) small traditional subsistence salmon harvests.

4. In specific areas, allow the sale of roe from subsistence caught salmon only during commercial fishing seasons and during regular commercial fishing periods. This will also prevent the expansion of the subsistence fishery solely for the purpose of sale of roe and insure adequate spawning escapements during the season.

5. Allow the sale of roe from subsistence caught fish only after the king salmon run or season is completed. This in effect could be labeled a "special roe season." The king salmon runs are already extensively harvested and there are indications that these runs are depressed at the present time. The runs of other species of salmon are comparatively more abundant, have less fishing effort and some can probably withstand a small increase in utilization. If the authorization of sale of subsistence caught roe results in an increase above traditional harvest levels, then these runs would have to be managed more conservatively in the future. This method may have most merit in the Yukon-Kuskokwim areas where king salmon runs are present.

6. Establish a roe quota in each management area based on recent subsistence harvest levels. Reasonable estimates can be made of the salmon roe production (numbers of skeins and/or poundage) resulting from recent subsistence harvest levels using known catches and sex ratios. Once these quotas are taken, the sale of roe from subsistence caught salmon would be prohibited for the remainder of the season. This would prevent large-scale expansion of the subsistence fisheries solely for the purposes of selling roe and would assist in maintaining subsistence harvests at recent traditional levels.

7. Due to the vast size of the fishing areas involved, in addition to the large numbers of fishermen and processing stations, enforcement of regulations and monitoring of the fishery associated with the authorized sale of subsistence caught salmon roe would require several additional personnel assigned to the Department. The following additional seasonal employees would be required in each area: (1) Kuskokwim--three employees from June through August; (2) Yukon--three employees from June through September; (3) Norton Sound-Kotzebue--one employee from July through September.

BOARD OF FISH AND GAME
FINDING OF EMERGENCY

The Board of Fish and Game finds that an emergency exists and that the attached regulation is necessary for the immediate preservation of the public peace, health, safety or general welfare. A statement of the facts constituting the emergency is:

1. A subsistence salmon fishery occurs in the Arctic-Yukon-Kuskokwim area. In 1974, the subsistence salmon catch is expected to be approximately 400,000 fish.
2. The laws and regulations governing subsistence fishing are premised on traditional utilization practices that involved use of the flesh for human food and of the viscera and gonads for dog food. With the advent of snow machines and the rapid decline in numbers of dogs, salmon gonads are now largely extraneous to home requirements and are wasted.
3. Salmon roe has recently increased in value as a commercial product, and as an otherwise useless by-product of subsistence fishing, its sale would be consistent with the expressed state policy of maximized utilization of natural resources and enhancement of the welfare of people in an economically depressed region. Therefore, an emergency regulation that remedies the existing conflict between existing regulations and the best interests of the people and resources is required.

The regulation, SAAC 39.890(d), attached hereto, is therefore adopted as an emergency regulation to take effect immediately upon filing by the lieutenant governor as provided in AS 44.62.180.

DATE

June 14, 1974

James W. Brooks
James W. Brooks, Secretary
Board of Fish and Game

I, Henry A. Boucher, Lieutenant Governor for the State of Alaska, certify that on June 15, 1974, at 12:15 P.m., I filed the attached regulation according to the provisions of AS 44.62.040-44.62.120.

Register 51

Henry A. Boucher
Henry A. Boucher (NEWMAN CORNER)
Lieutenant Governor, DESIGNEE
State of Alaska

NOTICE OF ADOPTION OF EMERGENCY REGULATION

Pursuant to the Administrative Procedure Act (Alaska Statutes 44.62) notice is hereby given that the Alaska Board of Fish and Game has adopted the following regulation:

REGULATION PERMITTING THE SALE OF SALMON ROE FROM
SUBSISTENCE CAUGHT FISH IN THE ARCTIC-YUKON-KUSKOKWIM AREA

5AAC 39.890 RESTRICTIONS.

(d) It is unlawful to buy, sell or barter subsistence caught fish or parts thereof provided, however, that in the Arctic-Yukon-Kuskokwim Area salmon roe incidentally obtained as an unavoidable by-product of legal subsistence fishing may be bought, sold or bartered in quantities directly related to salmon otherwise fully utilized for traditional subsistence purposes.

End of Regulation

IE trends ^{on week to week basis} indicate catch will go above 1974

How much waste before exercising
emergency closure

What was catch increase last year

How about limit 10% above 10 year ave
10% above catch in last 10 years

400,000 lbs roe 400,000 fish A-4K

polled board - May voted for 1974
emergency regulation

- 1974 - 422,000 of processed from com. fish
182,000 of " " " sub "
\$ 216,900 net worth

only allow 10% above 1974 subsistence
level

April 7, 1975

Guy A. VanDoren, Staff Assistant
House Resource Committee
Fouch V
Juneau, Alaska 99811

Dear Mr. VanDoren:

For the information of the House Resource Committee, it was a Conference on Rural Legislative Priorities held in Juneau on March 24-25, 1975 and sponsored by the Alaska Federation of Natives, Inc., the Rural Alaska Community Action Program, and the Department of Community and Regional Affairs that considered commercial use of fish roe taken from subsistence fish a low priority piece of legislation. The Conference results are recommendations until ratified by the AFN Human Resource Committee and that is scheduled for April 15, 1975 here in Anchorage.

Reasons for considering the commercial use of fish roe taken from subsistence fish a low priority piece of legislation is concern that we would forget about subsistence and catch for commercial use, therefore depleting further an already endangered species. This would also endanger the subsistence fishing activities in the long run if many violations were proven. Many voiced the opinion they would much rather keep their traditional subsistence fishing activities than to have the annual take regulated by the Department of Fish and Game. Their regulation maintaining salmon stocks on a sustained yield basis hasn't proven very successful throughout the State. In fact, management on a sustained yield basis is often justification for closure. Another real concern is the possibility of all Alaskans catching fish in the name of subsistence entering into the picture and jeopardizing a noble effort on the part of your Committee. There were other arguments in the Fisheries Committee and during the Conference, but the above I believe are the primary reasons.

Once again, we aren't opposed to this piece of legislation, but it has been recommended a low priority item. I expect our Committee to ratify this recommendation next week however.

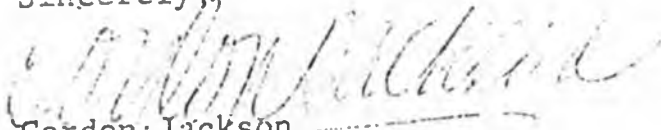
Guy A. VanDoren

2

April 7, 1975

Please let me know if you wish further explanation.
My best wishes to Chairman Anderson.

Sincerely,



Gordon Jackson
Executive Vice-President
Human Resources Administration

GJ:jb

cc: Robert Schaeffer, Chairman, AFN Human
Resources Committee
Trefon Angasan, Chairman, Fisheries
Committee
Phil Smith, RurAL CAP
✓Richard Listowski

ALASKA
STATE LEGISLATURE

MEMORANDUM

3/21

Rep. Anderson,
Are you certain that you want
sec. 831 to expire in 1977? It strikes me that
this is a very valuable general provision for the
fish code and not really connected to or dependent
on the preceding provision relating to sale of

eggs.
Secondly, Confining the sale of eggs to one group of
subsistence users, excluding others in the same category

ALASKA
STATE LEGISLATURE

MEMORANDUM

must be able to be justified on a management basis or is surely subject to challenge. I'm assuming that you are prepared to justify it on the basis that sale of eggs elsewhere would in some way jeopardize or interfere with the maintenance of existing stock there. Of course, it would also be permissible if the use ~~is~~ⁱⁿ another area was not a subsistence use.

Finally, a letter of intent is for the

ALASKA
STATE LEGISLATURE

MEMORANDUM

purpose of clarifying or explaining something in
a bill that is unclear or ambiguous.
~~It is to be noted that~~ a court would ^{not} controvert the
clear wording of the statute as generally
applicable, and read it to apply only
to the arctic - Kuskokwim area.

I hope this may be of some
assistance to you.

Joel Bennett

Dear Editor:

The following was sent to Gov. Jay Hammond.

Dear Governor,

Once again I'm compelled to call to your attention an illegal act perpetrated amid the grossest political overtones by a member of your administration, although not during it. And once again one can demonstrate how the professional management of the state's fish and game resources has been subverted in recent years by calculated political manipulation, on behalf of special economic interests and in a manner which is destructive of the state's natural fisheries resources.

Last June 14 Fish and Game Commissioner Jim Brooks promulgated, in the name of the Board of Fish and Game, acting as its secretary, an emergency regulation permitting the sale of roe from subsistence-caught salmon in the Arctic-Yukon-Kuskokwim area. Issuance of the regulation caught

the area's fisheries staff utterly by surprise, and wholly unprepared to cope with its management responsibilities, coinciding as it did with the start of seasonal salmon migrations upstream. However, even had the regulation been promulgated well in advance of the salmon runs, the field staff would have been unable to monitor and manage the subsistence harvests, greatly expanded by the incentive to maximize roe harvests, without the assignment of at least eight additional enforcement personnel in the A-Y-K area.

Subsequent harvest figures show that subsistence salmon catches from the Yukon and Kuskokwim Rivers were substantially larger in 1974 than in recent years. Since the trend in the subsistence catch in the years prior to 1974 was stable or downward, one must deduce that the vastly increased catch in 1974 was in large part attributable to the lure of a new economy based on subsistence-caught salmon roe, thus expanding the 1974 salmon harvest without demonstrably expanding subsistence consumption.

The obvious implication, of course, is that uncounted numbers of salmon were harvested for the purpose of obtaining their roe only, and their carcasses discarded. Although department field personnel were able to document only one case of salmon wastage involving some 500 fish, there were many undocumented reports of wastage which went unconfirmed by the department because there were insufficient enforcement officers in the field to monitor the harvests.

The economic incentive for the sale and purchase of subsistence-caught salmon roe, as you know, is considerable. The first wholesale value of the subsistence-caught roe from the

Kuskokwim River alone was estimated at \$400,000, and the major buyer-processor, Kemp-Palucci, a Minnesota-based firm operating out of Bethel, realized a value of \$270,000.

Whereupon, the politico-economic implications visibly intrude. Shortly before the issuance of the emergency regulation, the previous administration received Telegrams from two prominent Minnesota political figures, one of them U.S. Senator Hubert Humphrey, urging Gov. Egan to legalize the sale of subsistence-caught roe. Obviously, Sen. Humphrey and his congressional colleague covertly intervened on behalf of their constituent, a prominent Minnesota fish processor who just happened to be the principal beneficiary of the increased roe harvest in the A-Y-K area in 1974.

It should be noted that although three bills which would have legalized the sale of subsistence-caught salmon roe were introduced in the legislature in 1974, none passed, clearly establishing the legislature's negative intent in this regard. Notwithstanding that clear expression of legislative disapprobation, Commissioner Brooks presumed to issue Emergency Regulation 5AAC 39.830, in the absence of statutory authority. Furthermore—although it's not really relevant, since the regulation was clearly illegal—there is no evidence in the board's minutes that Commissioner Brooks polled the members of the Board of Fish and Game to obtain a quorum consent, which he must do in any case when acting on its behalf as secretary of the board.

Since my experience with your legal department has already shown that one cannot rely upon it for critical and independent evaluation of your administration, I've attempted to establish the illegality of

Commissioner Brooks' actions in this regard. Please note that Title 16 of the Alaska Statutes, 05.940 (17), defines subsistence fishing as "...the taking, fishing or possession of fish, shellfish, or other fishery resources for personal use and not for sale or barter..." (Emphasis added).

Please note also that Title 16.05.920 makes it "...unlawful for a person to take, possess, transport, sell, offer to sell, purchase, or offer to purchase, game or marine aquatic plants, or any part of fish, game or aquatic plants, or a nest or egg of fish and game...unless permitted by this chapter or by regulation made under this chapter." (Emphasis added). Since legislative attempts in 1974 to legalize regulations providing for the sale of sub-

sistence-caught salmon roe under AS Title 16, as noted above, failed to pass the legislature, no such authority presently exists.

Since Commissioner Brooks' illegal actions precipitated a myriad of illegal sales and purchases of subsistence-caught salmon roe, numbering in the thousands, and implicating literally hundreds of persons as accomplices, it seems improbable that the state has any practical recourse in this matter, ex post facto. Nonetheless, I felt these circumstances and their implications should be brought to your attention, in hopes that they will at the very least, preclude any recurrence.

Sincerely,

Joe La Rocca
Fairbanks, Alaska

The People

ALASKA FEDERATION OF NATIVES, INC.

1675 C STREET
ANCHORAGE, ALASKA 99501
PHONE (907) 271-3611

Home - Pride in Heritage, Progress

EXECUTIVE OFFICE

April 7, 1975

Guy A. VanDoren, Staff Assistant
House Resource Committee
Touch V
Juneau, Alaska 99811

Dear Mr. VanDoren:

For the information of the House Resource Committee, it was a Conference on Rural Legislative Priorities held in Juneau on March 24-25, 1975 and sponsored by the Alaska Federation of Natives, Inc., the Rural Alaska Community Action Program, and the Department of Community and Regional Affairs that considered commercial use of fish roe taken from subsistence fish a low priority piece of legislation. The Conference results are recommendations until ratified by the AFN Human Resource Committee and that is scheduled for April 15, 1975 here in Anchorage.

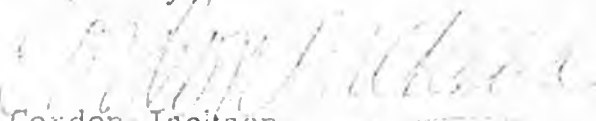
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Once again, we aren't opposed to this piece of legislation, but it has been recommended a low priority item. I expect our Committee to ratify this recommendation next week however.

April 7, 1975

Please let me know if you wish further explanation.
My best wishes to Chairman Anderson.

Sincerely,


Gordon Jackson
Executive Vice-President
Human Resources Administration

GJ:jb

cc: Robert Schaeffer, Chairman, AFN Human
Resources Committee
Trefon Angasan, Chairman, Fisheries
Committee
Phil Smith, RurAL CAP
✓Richard Listowski

CHAIRMAN
NELS A. ANDERSON, JR.

STAFF ASSISTANT
GUY VANDOREN

PO BOX 17
JUNEAU ALASKA 99801



VICE CHAIRMAN
TED SMITH

SECRETARY
BETH O'DONNELL

PHONE 465-2715
465-2751

House Resource Committee

FRED BROWN

ALVIN OSTERBACK

DICK ELIASON

LEO RHODE

MIKE HERSHBERGER

LESLIE (RED) SWANSON

JAMES HUNTINGTON

April 3, 1975

Mr. Gordon Jackson
Alaska Federation of Natives
1675 C Street
Anchorage, Alaska 99501

Dear Mr. Jackson:

It has recently come to the attention of the House Resources Committee that A.F.N. has come out against commercial use of fish roe taken from subsistence fish.

The committee passed the fish roe bill out of committee having heard positive testimony from many natives especially in the Yukon-Kuskokwim area.

Although the bill is now in the House Judiciary Committee, we would like to have testimony regarding the reason A.F.N. is in opposition to this bill.

Sincerely,

A handwritten signature in cursive script that reads "Guy A. Vandoren".

Guy A. Vandoren
for Nels A. Anderson, Jr.
Chairman-House Resource Committee

WD/td

101

House Judiciary Committee
April 22, 1975

The meeting was called to order at 7:13 p.m. by Chairman Gardiner. All members were present.

HB 314 Outdoor Advertising

Walt Parker, Commissioner of the Department of Highways, testified that the present statute bans signs within 660 feet -- the bill would ban signs visible within 660 feet. The bill is needed to conform to federal statutes. Without it Alaska will lose 10% of federal highway monies - \$10-12 million.

page 1, line 19: delete "secondary"
page 2, line 14: insert "primary delete "secondary"
This amendment was to permit advertising on secondary roads which are not funded by federal money.

Mr. Williams of the Department of Highways stated that non-complying signs would be allowed to stand until July 1, 1976. After that date there would be condemnation and compensation paid to the sign owner.

Mr. Bradley moved to adopt the Commerce amendments and move the bill out. Mr. Specking objected.

Mr. Parr moved to amend the motion to delete "or secondary" from the existing laws. Mr. Gardiner objected. The amendment carried.

The bill was moved out as CS with individual recommendations.

SB 96 Salmon eggs

Commissioner Brooks stated that last year this bill died in committee. During the summer regulations were adopted permitting the sale of eggs. The Attorney General recommends that this sale be allowed in the statute. Roe are worth from \$1 to \$1.50 a pound. This is wasted if the eggs are not sold. This was why emergency regulations were adopted affecting a limited area. Roe used to be used for dog food, but now there are fewer dogs in the area. 2.4 million subsistence fish were taken last year. This was due to a large chum run.

Jimmy Huntington stated that illegal traffic in roe was minimal in the AYK area, heavier in the Nenana area. Statistics showed illegal sales accounted for 10-15% of the total in areas where Japanese had processing. He favored trying the bill.

House Judiciary Committee
April 22, 1975
page 2

page 2, line 10 add: "When the commissioner finds that the subsistence catch in the area exceeds, or is expected to exceed by 10% the subsistence catch of the 1974 season, he shall close that area to subsistence salmon ro. sale by emergency order."

page 1, line 16 add "a" new section
page 2, line 22 AS 16.05 is amended by adding a new section to read
page 3, line 11 strike 3, insert 4
sections 16 1 and 2 of this Act expire
January 1, 1977

The above amendments were adopted and SB 96 passed out of committee as a CS.

SB 59 Juveniles

Diane Nelson testified that some juvenile offenders cannot be rehabilitated. Citizens should know the names of multiple offenders. The superior court approves the CS and it was drafted by Associate Justice Boochever. The CS recommends publication of only certain names at the discretion of the court, even after second conviction.

S B

9 9

"An Act relating to public records; and providing for an effective date."

2/20/75

COMMITTEE REPORT

HOUSE

Mr. Speaker:

Date 4/29/75

The Committee on Judiciary has had CSRD 07

under consideration. A Majority of the members of the Committee

() recommends it DO PASS

() recommends it DO NOT PASS

() recommends it DO PASS WITH ATTACHED AMENDMENT(S)

() recommends it BE REPLACED WITH CS FOR _____ AND THAT

CS FOR _____ DO PASS

() "and" recommends it BE REFERRED TO THE _____

COMMITTEE

() reports it back WITHOUT RECOMMENDATION

() "other"

Members signing the Majority report:

<u>[Signature]</u>	<u>[Signature]</u>	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

Original sponsor: Rules Committee

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 99
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to public records; and providing for
7 an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 09.25 is amended by adding a new section to read:

10 Sec. 09.25.125. ENFORCEMENT: INJUNCTIVE RELIEF. A person having
11 custody or control of a public record who obstructs or attempts to
12 obstruct, or a person not having custody or control who aids or abets
13 another person in obstructing or attempting to obstruct, the inspection
14 of a public record subject to inspection under sec. 110 or 120 of this
15 chapter may be enjoined by the superior court from obstructing, or
16 attempting to obstruct, the inspection of public records subject to
17 inspection under sec. 110 or 120 of this chapter.

18 * Sec. 2. AS 11.30.240 is amended to read:

19 Sec. 11.30.240. MISHANDLING OF PUBLIC RECORDS. A person who has
20 the legal custody of and who wilfully destroys, secretes, or mutilates a
21 public record, book, paper, or writing, or a person [AN ATTORNEY] who
22 wilfully destroys, secretes, or mutilates a public record, book, paper,
23 or writing, or wrongfully takes a public record, book, paper, or writing
24 from the person having legal custody of it, or who has obtained posses-
25 sion wrongfully and refuses or neglects to return or produce it when
26 lawfully required or demanded so to do, upon conviction, is punishable
27 by a fine of not less than \$100 nor more than \$500, or by imprisonment
28 for not less than 90 days nor more than one year, or by both [IMPRISON-
29 MENT IN THE PENITENTIARY FOR NOT LESS THAN SIX MONTHS NOR MORE THAN ONE

expand to all persons

1 YEAR, OR BY IMPRISONMENT IN A JAIL FOR NOT LESS THAN THREE MONTHS NOR
2 MORE THAN ONE YEAR, OR BY A FINE OF NOT LESS THAN \$100 NOR MORE THAN
3 \$500].

4 * Sec. 3. AS 11.30 is amended by adding a new section to read:

5 Sec. 11.30.245. OBSTRUCTION OF ACCESS TO PUBLIC RECORDS. A
6 person who has custody or control of a public record who intentionally
7 obstructs or attempts to obstruct, or a person not having custody or
8 control who intentionally aids or abets another person in obstructing or
9 attempting to obstruct, the inspection of a public record subject to
10 inspection under AS 09.25.110 or 09.25.120 is guilty of a misdemeanor
11 and, upon conviction, is punishable by a fine of not less than \$100 nor
12 more than \$500. Upon a subsequent conviction, that person is guilty of
13 a misdemeanor and is punishable by a fine of not less than \$250 nor more
14 than \$1,000, or by imprisonment for not more than six months, or by
15 both.

16 * Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-
17 070(c).

18 *↓ criminal belongs in title 11 - we relocated this part*

19
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23 * Sec. 1 provides for injunctive remedy - would be in addition
24 to a writ of mandamus remedy available to force
25 public officials to do their duties properly.
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27
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29

House Judiciary Committee
April 28, 1975

The meeting was called to order at 1:25 p.m. by Chairman Gardiner. All members were present except Mr. Eliason.

SB 99 Public Records

The committee reviewed the proposed CS by the Judiciary Committee which put section 2 in title 11 and incorporated material relating to the Ombudsman. Mr. Brown moved the Judiciary CS CS SB 99 do pass. There being no objection, it was so ordered.

SB 167 False reports

Mr. Brown moved SB 167 out do pass since it had been determined that it was in the correct title.

HB 418 Conflict of Interest

The committee reviewed the proposed CS by the Judiciary Committee which cleans up the problem of "members of municipal bodies" and "special" elections.

Mr. Parr raised the question on page 1, line 26 as to whether "legislative" only applied to state level or whether it could be interpreted to include municipal level. Mr. Walker stated that it could be open to interpretation. The committee requested Mr. Walker to draw up additional language to the effect that legislative related to matters before the state government.

HB 416 Abuse of power

Since the bill was determined to be in the correct title, Mr. Brown moved HB 416 out of committee as amended. There being no objection, it was so ordered.

HB 417 Intelligence Information

Mr. Brown moved HB 417 out of committee. There being no objection, it was so ordered.

CS SCR 5 Criminal Code

Mr. Brown moved this bill out of committee as it was the same as a bill already acted on by the committee. Mr. Gardiner mentioned the possibility of getting a LEAA grant for the study to be matched by state funds.

108

House Judiciary Committee
April 24, 1975
page 2

SB 99 Public records

The committee felt that (b) should be in title 11.
line 12: change hinder to withhold or deny or obstructs
of to a phrase using several other words.
line 11: change to the person responsible for the custody
of the records -- also in line 17

HB 246 Liquor license

Don Clocksin stated that the first section concerns notice. Section 2 provides that if one person objects to any license filed, the ABC Board has the option of accepting his protest. If 35% of the adults object, an election is required in which they can vote to go dry. This must cover all establishments in the area and not be selective. Outside a village, if a majority of the people object at a public hearing, the Board may refuse to grant the license. Section 4 makes a violation of the law a misdemeanor so that Troopers could be called in to enforce.

Mr. Bradley moved the C & RA CS out of committee do pass. There being no objection, it was so ordered.

SB 180 Salmon Hatcheries

Phil Daniels stated that the bill will require Fish and Game to cooperate with private hatchery groups. This was the legislative intent in allowing private hatchery groups in the past but this apparently was not clear to the Department because some problems developed.

Mr. Brown moved SB 180 out of committee do pass.

The committee agreed that the four bills discussed earlier should go to legislative affairs to make sure that they were in the correct titles.