

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

be given when the city has such an intention, in answer to one of Mr. Coffin's question.

Relative to the appraisal of damages, we feel that he should use customary procedures relative to property to be condemned, and in the event that there are aggrieved parties, Section 33 of Chapter 84 affords relief.

JAMES G. FROST
Assistant Attorney General

November 20, 1951

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Featherfish and Spinning with Rod and Reel

This office has given consideration to your recent request for rulings concerning the so-called "featherfish" and "spinning with rod and reel".

On page 26, Section 44 of your Inland Fish and Game Laws, is found the legislature's ruling upon what may lawfully be used and what is restricted from use as concerns these two items. The statute provides that it is lawful to fish with the use of a single-baited hook and line, artificial flies, artificial minnows, artificial insects, spinhooks and spinners. By legal interpretation the word "artificial" is defined as being in opposition to the word "natural"; in one sense as being artful, subtle, crafty and ingenious. An exact imitation is not necessary to being an article within the meaning of the word "artificial". An imitation close enough to render an article suitable for use in like manner is sufficient. The statute does not define "fly" or "insect" or provide for definition by rule. While the definition on page 5 of your department's so-called "handbook" is proper, it is not exclusive, and an artificial fly or insect such as the sample supplied and called "flyrod size featherfish" is, in the opinion of this office, permissible under the statute for fly-fishing. We believe it is properly termed an artificial fly.

As to the spinning rod and reel, we believe that this instrument is lawful to be used if not left unattended. If left unattended it would be under the prohibition of a set line.

NEAL A. DONAHUE
Assistant Attorney General

November 20, 1951

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Court Cases before Judge Hugh Hastings

With your memorandum relative to the above subject you submitted a copy of a memorandum which you had received from the Governor, together with a copy of a letter which you wrote to the Governor dated October 3, 1951.

In your memorandum you ask for an opinion from this office relative to the law mentioned in the third paragraph of your letter to the Governor, which paragraph reads as follows:

"I have telephoned Judge Hastings and he said that the present law is so vague that he felt it was all right for them to shoot a deer, since there had been crop damage in the field $\frac{1}{4}$ of a mile distant from the place where the deer was shot. From our point of view, that is completely ridiculous, but that is what the Judge ruled. He also advised me that it does not give permission in the law for a person to hunt deer which have been doing damage, with a light, and no place in the law says definitely that lights cannot be used, and he admitted that he should have held them on that count, but 'did not think of it at the time.'"

The powers of the government are divided between the Executive, Judicial and Legislative. In their proper spheres, each of these basic departments of government is designed to operate so that no one of them encroaches upon the spheres of the others. The legislature has enacted a statutory program for the regulation of hunting and conservation of inland fish and game. The legislature has also created the courts of the State to constitute the judicial tribunals before whom alleged violations of the laws enacted by the legislature shall be tried and guilt or innocence determined.

With respect to your memorandum and the attached correspondence, there appears to be no question raised as to the jurisdiction of Judge Hastings to hear the cases which were brought before him, so that it would appear that his court was the proper place to have the question determined. In cases of this kind the State has no appeal, so that determination of the judge who hears the case is final except in so far as he commits errors of law from which respondents are entitled to appeal.

The Attorney General's office is a part of the Executive branch of government and has no authority whatsoever to act as an appeal agency from any court's decision, and it should go without saying that it has no authority to issue any opinion of any validity in criticism of any action taken by the judicial branch of the government or the legislative branch of the government. It would be decidedly improper for this office to express any opinion as to the decision reached by Judge Hastings in the cases referred to.

JOHN S. S. FESSENDEN

Deputy Attorney General

November 26, 1951

To Ronald W. Green, Chief Warden, Sea and Shore Fisheries
Re: Conservation of Scallops in Penobscot Bay

We have your memo of November 13, 1951, and attached paper petitioning the Commissioner of Sea and Shore Fisheries to declare that an emergency exists in the coastal waters of Penobscot Bay, and to hold a hearing relative to the matter.

The alleged emergency is said to have been created

"by reason of the operation of certain large scallop draggers in such coastal waters operating 24 hours each day and with two ten (10) foot drags in such a manner that the fishing grounds for scallops are being rapidly destroyed and that by reason thereof the conservation of these