

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

"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

species appears to be endangered; that such large boats fishing in such manner constitute a peril to small boats fishing in such waters; . . .”

The petitioners further allege that they

“believe that the fishing of such species in such waters in order to properly effect conservation should be limited to boats equipped with one six (6) foot drag or two (2) three (3) foot drags and with the time for such fishing limited to the period between daylight and darkness.”

You then ask three questions:

- “(1) May the Commissioner hold a hearing on this petition?
- (2) If a hearing is permissible and the results seem to be in favor of the petitioners, will the Commissioner have the authority to limit the size drags to be used?
- (3) Will the Commissioner have the authority to limit the time of fishing to daylight time only?”

The answer to Question 1 is, “Yes.” Paragraph 6, Section 5, Chapter 34, R. S. 1944, as amended, provides that the Commissioner may declare an emergency and order a hearing held at a time and place to be designated by him “when for any reason the conservation of species appears to be endangered.”

With respect to Question 2, grave consideration should be given to the possibility that the answer, “Yes,” might be a discriminatory answer against those who have expended considerable money on larger boats and consequently hire larger crews. Ultimately, a larger boat with a larger crew, using ten-foot drags, may benefit no more than a smaller boat with fewer crew members using a six-foot drag. The question is potentially a dangerous one and, though the answer may be legally, “Yes,” it might result in needless injury, whereas the problem of depletion of scallops may be rectified by the answer to Question 3.

The answer to Question 3 is, “Yes.” Paragraph 6, Section 5, Chapter 34, R. S. 1944, as amended, provides that the Commissioner may promulgate regulations providing for the *TIMES*, number, weight, and manner in which such fish . . . may be taken from such waters or flats. This provision would give to the Commissioner the right to make rules and regulations limiting the time of scallop-fishing to daylight hours.

You will note that this provision also gives to the Commissioner the right to regulate the number and weight of such fish. A proper regulation relative to number and weight of the fish should also furnish the means of conserving such fish.

JAMES G. FROST
Assistant Attorney General

November 27, 1951

To Earle R. Hayes, Secretary, Maine State Retirement System
Re: County Extension Associations

We have your memos of recent date relative to County Extension Associa-