

# MAINE STATE LEGISLATURE

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March 31, 1960

**Atlantic Sea Run Salmon Commission**

**George A. Wathan, Asst. Atty. Gen.**

**Attorney General**

**Validity of Rules and Regulations re Narraguagus River**

**Attention: Ronald W. Green, Commissioner of Sea & Shore Fisheries.**

We have your oral request for an opinion as to the validity of the most recent rule and regulation promulgated by the Atlantic Sea Run Salmon Commission relative to open fishing dates on Narraguagus River.

It appears that the Commission promulgated a rule and regulation establishing open fishing dates on the Narraguagus River that coincide with dates for fishing generally on rivers by the general law, i.e., April 1 to September 15 (Chapter 37, section 44, subsection IV provides that - "there shall be an open season for all fish except black bass in all rivers above tide water in waters free of ice from April 1 until September 15"), the Commission acting upon a petition worded substantially as follows:

"We, the majority of the Municipal Officers of the town of Cherryfield, do hereby petition the Atlantic Sea-Run Salmon Commission to hold a public hearing to consider establishing rules and regulations providing for the open season for taking Atlantic Salmon on hook and line in the Narraguagus River, Washington County from April 1 to September 15, both days inclusive."

Letters have been received questioning the legality of such rule and regulation presumably on the basis that the petition did not conform with the requirement of the law in setting forth conditions adversely affecting Atlantic sea run salmon, and the regulations which were desired as a remedy.

Chapter 38, section 38, as amended by Chapter 397, section 29, Public Laws 1959, being the law upon which the rule and regulation was based, provides in part as follows:

"The Atlantic Sea Run Salmon Commission, hereinafter in this section designated as the "Commission," shall have authority to promulgate rules and regulations providing for the times, number and manner in which Atlantic sea run salmon may be taken in all waters of the State.

Atlantic Sea Run Salmon Commission

March 31, 1960

Attention: Ronald W. Green

"Whenever any existing conditions, except those which are or may be or become within the jurisdiction of the Water Improvement Commission under the provisions of chapter 79, adversely affect Atlantic sea run salmon within the territorial limits of the State, the Commission, after notice and hearing, shall make such regulations as may be deemed remedial of any such adverse conditions in the manner provided.

"Petitions, stating the conditions affecting the fish and the regulations which are desired as a remedy, may be addressed to the Commission by a majority of the municipal officers or 25 citizens of any municipality in which the waters exist; or if the waters are in an unorganized territory, by a majority of the county commissioners of the county in which said waters exist; or the Commission may declare an emergency and designate the time and place of hearing."

It is our opinion that the rule and regulation in question is valid.

Prior to the promulgation of the rule and regulation in question, a rule and regulation had been adopted by the Commission in 1948 providing in part that the open season for Atlantic sea run salmon would be the same as for landlocked salmon, "except that the season is from May 1 to September 15 in the Eunnys and Narraguagus Rivers."

Since the law in 1948 was substantially the same as it is today, we assume that such rule and regulation narrowing the fishing time on Narraguagus was based upon conditions adversely affecting the Atlantic salmon.

It is our opinion that once a river is closed to Atlantic salmon fishing, or such fishing limited because of adverse conditions, then in the event those adverse conditions no longer exist the restriction on fishing may be lifted so as to coincide with dates set by the legislature.

To come to any other conclusion, that is to conclude that the Atlantic Sea Run Salmon Commission can only close or restrict fishing upon adverse conditions being found, and be powerless to lift those restrictions when ideal or close to ideal conditions return, would be unreasonable.

Atlantic Sea Run Salmon Commission

March 31, 1960

Attention: Ronald W. Green

The action of the Commission in promulgating the new rule and regulation does no more than find that the adverse conditions upon which the prior rule and regulation was based no longer exist and the fishing dates are, therefore, being returned to those dates set by the legislature.

It is for the above reasons that we conclude that the most recent rule and regulation is proper.

We would advise that if citizens of the area or other persons embraced by the law, believe that present conditions adversely affect Atlantic salmon, then they should present the petition as contemplated in Chapter 37-A, section 21, Revised Statutes of 1954, as amended, (the present law relating to this matter) and another hearing can be heard at which time evidence can be presented showing such adverse conditions.

George A. Wathen  
Assistant Attorney General

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