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AUGUSTA, MAINE 04333

November 12, 1980

Glenn H. Manuel, Commissioner
Department of Inland Fisheries
and Wildlife
State House
Augusta, Maine 04333

Dear Commissioner Manuel:

You have inquired whether wildlife biologists who mark trees for the purpose of guiding forest cutting practices with the objective of preserving wildlife habitat are practicing forestry within the meaning of 32 M.R.S.A. § 5003(4), such as to require them to be licensed by the Board of Registration for Professional Foresters. The opinion of this office is that wildlife biologists engaged in the above-described activity are not practicing forestry such as to require them to be licensed.

The forester registration and licensing provisions contain a general prohibition against a person engaging in the practice of forestry without first being licensed as a registered professional forester. 32 M.R.S.A. § 5002. "The practice of forestry" is broadly defined as:

"Any professional services relating to forestry requiring the application of forestry principles and techniques. Such services shall include but not be limited to investigations, consultations, development of forest management plans, responsible supervision of forest management, forest utilization, forest economics or other forestry activities as carried out in connection with any public or private lands." 32 M.R.S.A. § 5003(4).

The question presented, then, is whether the wildlife biologists' activity of marking trees with the objective of preserving wildlife habitat falls within this definition.

The answer is contained in the inquiry you present. The wildlife biologists' activity has as its objective the preservation of wildlife habitat, not what would normally be considered

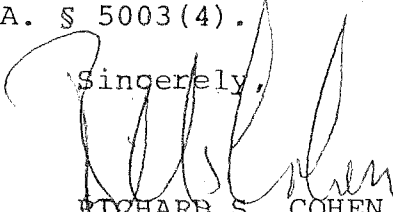
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Department of Inland Fisheries
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the object of the practice of forestry. The biologists' activity is not motivated by forest management; rather, the thrust of the activity relates to wildlife habitat requirements. These latter requirements are founded upon the need to retain a particular type of environment in the wilderness to sustain wildlife. This type of activity does not fall within the definition of "the practice of forestry."

The intent of the Legislature does not appear to be furthered, and indeed may be hindered, by including the wildlife biologists' activity within the definition of forestry. The purpose of the forester registration and licensing provisions is "to protect the public by improving the standards relative to the practice of forestry; to protect the public from unqualified practitioners; and to help insure the proper management of the forest resources of the State." 32 M.R.S.A. § 5001; Statement of Fact, L.D. 1412 (P.L. 1975, c. 490). The purpose of the forester registration and licensing statute is not furthered by requiring wildlife biologists to be licensed professional foresters. Requiring wildlife biologists to be licensed in order to occasionally mark trees to preserve wildlife habitat, such marking not being motivated by forestry utilization but rather by wildlife preservation, would undermine the purpose of the statute. The wildlife biologists are concerned with standards of wildlife management, and are not presenting themselves as practitioners of forestry. Moreover, requiring a wildlife biologist whose expertise is in wildlife management to also meet the requirements of schooling and/or practice as a forester (32 M.R.S.A. § 5012) might well render it very difficult, if not impossible, to find personnel to fulfill the responsibilities of a wildlife biologist. Such an unfavorable result should not be read into the law.

In conclusion, a wildlife biologist who marks trees for the purpose of guiding forest cutting practices with the objective of preserving wildlife habitat is not practicing forestry within the meaning of 32 M.R.S.A. § 5003(4).

Sincerely,



RICHARD S. COHEN
Attorney General

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