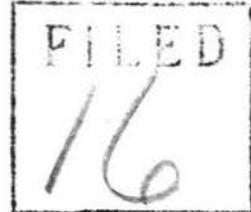


FISH AND GAME:
GIGGING:

When and what specie of fish maybe
gigged, speared, etc.

March 30, 1938



Mr. Paul N. Chitwood,
Prosecuting Attorney,
Reynolds County,
Centerville, Missouri.

Dear Sir:

This is to acknowledge yours of the 29th of March requesting an official opinion from this department which request is as follows:

"Recently, in this county a local game warden had a man charged (in February of this year) 'with having gigged two hog suckers out of season'. Since these are non game fish, it is my opinion that the legislature did not wish to protect these fish, since it expressly stated in another provision of the same law, that gar might be taken at any time. It is difficult to imagine why the legislature would make such a distinction. There appear to be many provisos in this law, and it is really difficult to understand just what was actually intended. Then too the law might be construed to make it a violation to fish with a gig at any time, out of season, even though it were for gar. In such event it might be very hard for defendants in such cases to show that they were only fishing for gar. Such an interpretation and enforcement would render this law vicious indeed.

Please let me have your opinion as to the meaning of this section of law, so that I intelligently advise the citizens of this

county, and the local game wardens, in order that greater respect may be had for the enforcement of the fish and game laws."

Your request particularly goes to the question of whether fish, other than game fish, may be giggered in this state and if so, when such may be done.

Section 8224, R.S. Mo. 1929 provides that the ownership of the fish and game not held by private ownership legally acquired is in the State of Missouri.

From this section and the various court rulings cited thereunder, there is no doubt that the state has authority to designate in what manner and by what means fish and game may be taken by the public. Pursuant to that authority, the Legislature has enacted various sections of the statute covering such regulations, namely: Section 8264, R.S. Mo. 1929 prohibits any one from prohibiting free passage of fish along the streams; Section 8265 prohibits contamination of streams; Section 8266 prohibits the use of explosives to kill fish; Section 8270 regulates the use of nets and other devices in catching fish.

Section 8271, R.S. Mo. 1929 was repealed in 1931 and a new section enacted in lieu thereof which is at page 226, Laws of Missouri, 1931, and is as follows:

"It shall be unlawful for any person to take, catch or kill, or attempt to take, catch or kill, or to have in possession when so taken, caught or killed, any game fish in the waters of this state with a gig, spear, snare, snagline or grabhooks: Provided, that non-game fish shall not be so taken, caught or killed during the months of February, March, April, and May of any year, nor shall any one person so take, catch or kill to exceed 25 pounds of non-game fish in any one day: Provided, however, that

any one fish may be excluded from this weight in order to comply with the total weight of fish so taken. Provided further, that it shall be lawful to kill gar at any time. It shall be unlawful for any person, firm or corporation to catch, kill, take, ship, convey or transport, or cause to be so done, any specie of game fish taken from the waters of this state for commercial purposes. The term 'game fish,' as used in this section, shall be construed as the same are defined by section 8275. Any person, firm, association or corporation violating the provisions of this section shall be guilty of a misdemeanor."

Section 8271, R.S. Mo. 1929 provided that it shall be unlawful to spear or gig fish during the months of February, March, April, May and June of each year. This section as reenacted in 1931 did not contain the clause, "prohibiting the giggering" as did the old section, but it did state that non-game fish shall not be so taken, caught or killed during the months of February, March, April and May of any year. Upon an examination of the old section and the section as amended, Laws of 1931, page 226, we find that the Legislature intended that no one should gig, spear, or snare non-game fish during the months of February, March, April and May of any year.

Your request indicates that someone has been arrested for giggering "hog suckers" and that in view of the fact that the Legislature authorized the gar to be killed at any time, you thought the "hog sucker" also could likewise be killed. Section 8272, R.S. Mo. 1929 provides as follows:

"Logging, rock or hand fishing.--It shall be unlawful for any person or persons to take, catch or kill any fish in any of the waters of this state by means of 'logging' or 'rock fishing.' Provided further, that

fish known as hickory shad and grinnell and gar may be killed at any time with a gig."

The specie of fish known as the "hog sucker" comes within the class of non-game fish.

Said Section 8272 was in effect while the law prohibiting spearing any fish during the months of February, March, April and May and when said Section 8271 was repealed and reenacted, Section 8272 was not changed, which permitted the gigging of gar, hickory shad and grinnell at any time. If the Legislature had intended to permit the gigging of "hog suckers" at any time, it could easily have included such fish within an amendment to said section 8272 at the same time that Section 8271 was repealed and reenacted in 1931.

By the amendment of the law of 1931, it is evident that the legislators intended to prohibit the gigging, spearing, snaring, snag lining or grab hooking any game fish at any time, and to prohibit the catching or killing of any other fish in such a manner during the months of February, March, April and May of any year.

CONCLUSION

From the foregoing sections, this office is of the opinion that only that specie of fish known as hickory shad, grinnell and gar may be giggered, speared or killed at any season of the year; that fish classed as game fish shall not be giggered, speared or killed at any time of the year, and that non-game fish shall not be giggered, speared, snared, caught on grab lines or grab hooks during the months of February, March, April and May of any year.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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