

GAME AND FISH: Drum fish are not perch.

July 14, 1938

Honorable G. Logan Marr
Prosecuting Attorney
Morgan County
Versailles, Missouri



Dear Sir:

We acknowledge your request of July 9, 1938 for an opinion, which request reads as follows:

"No person shall take, capture or kill when taken from the waters of this state, in any one day, more than . . . fifteen white perch . . .', quoting from section 8275 of the 1929 statutes of the State of Missouri.

"The Fish and Game Department and the Game Warden therein have taken the interpretation, that the 'white perch', mentioned in the above creel limit means and applies to fresh water drum. Fresh water drum such as is found in all our streams are supposed to be these white perch. It has always been the common understanding that drum fish are rough or non-game fish, and not subject to regulations in any way; other than limitations that might exist in favor of rough fish of any kind.

"Commercial fishermen selling in this county have been arrested in other counties for having in their possession more than fifteen drum. There is no question but that drum can be sold at any time, but the department holds

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that drum fish are white perch, and not more than fifteen can be in the possession of any person at any one time.

"I would like to have an opinion as to whether drum fish are the same kind of fish as white perch, and subject to this limitation."

Section 8275, R. S. Mo. 1929, which is a section under the preservation of fish and game Article, mentions each and all of the fish that are to be protected under that Article. It does mention white perch and limits the possession of white perch to the number of fifteen, but nowhere in the section does it mention the drum fish.

In your request you state that the Fish and Game Department has interpreted that drum and white perch are of the same species and that they are arresting commercial fishermen for having more than fifteen drum in their possession. According to the Standard Library of Natural History, Volume III, page 612, in describing a perch, it is stated:

"It runs up to about five pounds in weight, and is carnivorous, eating most kinds of fish small enough for its swallow, including the fry of its own species, which are in some waters an excellent bait."

Encyclopaedia Britannica, Volume IX, page 41, describes the species of the white perch as "Morone Americana."

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The Standard Library of Natural History states the following about the "drum":

"One of the most of the family of (Meagres) is the species to which the name of drum has been given, from the extraordinary noise which it produces, though some other kinds emit similar noises."

"These sounds," Dr. Gunthrie writes, "can better be expressed by the word 'drumming' than any other. They appear to be very frequently heard by persons in vessels lying at anchor off the coast of the United States, where these fishes are very common. The precise method by which these sounds are produced is not known. Since they are accompanied by a tremulous motion of the vessel, it seems most probable that they are due to the beating of the tail of the fish against the bottom of the boat, to get rid of the parasites with which that part of their body is infested."

"The drum attains a length of more than four feet and a weight of over a hundred pounds."

As noticed by these authorities, the perch is of the "Morone Americana" and the drum is of the species of "Meagres." The drum makes a drumming sound and the perch does not make such a particular sound. In comparing the two fish, especially as to the species and the sounds made by the fish, it is without question that the drum is a different fish than the perch.

Sections of the Article for the preservation of fish and game must be strictly construed, and as the Article on the preservation of fish does not mention drum, that section of the Article does not apply to the drum fish.

In the case of State vs. Artz, 11 S. W. (2d) 1074, an attempt was made to convict the defendant for

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refusing to allow game wardens to inspect pelts which he had in his possession, under a statute which only permitted the warden to inspect and count fish, birds and animals. The court held that the statute must be strictly construed and held that inasmuch as the statute did not provide for the inspection in counting pelts, the defendant was not violating the law which said it was a misdemeanor not to allow the game wardens to inspect and count fish, birds and animals.

CONCLUSION

In view of the above authorities, it is the opinion of this department that the fish known as the drum should be considered as rough fish and is not protected under the fish and game act of the statutes. It is also the opinion of this department that commercial fishermen may have in their possession more than fifteen drum at any one time.

Respectfully submitted

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APPROVED:

J. E. TAYLOR
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