

**OPINION  
48-70**

July 16, 1948           (OPINION)

GAME AND FISH

RE: Fishing License

Early last winter your office was in contact with this office, which in turn transmitted your correspondence to the Game and Fish Department, with reference to the right of anyone to catch, take, or kill unprotected fish without a license. On January 27, 1948, Mr. Campbell, the then Deputy Game and Fish Commissioner, wrote a letter in which he stated that it was the opinion of the department that under chapter 20-03 of the 1943 Revised Code it was only necessary to have a license for catching, taking, or killing of protected game fish enumerated in section 20-0601 of the 1943 Revised Code.

Later, your office transmitted Mr. Campbell's letter to this office, and our Mr. Brace wrote you as of April 10, 1948, in which he concurred with and agreed to the opinion expressed by the Game and Fish Department.

Since that time, this matter has again been brought to our attention, at y our request, apparently on the basis of a statement contained on the inside cover of the compilation of the game and fish laws of the North Dakota Game and Fish Department for the years 1945-47, which says: "Rough fish or nongame fish may be taken with hook and line at any time in rivers by the holders of a fishing license."

Apparently, there is an impression that this reference constitutes a rule of the Game and Fish Department. I do not believe that this statement constitutes a rule or regulation of the Game and Fish Department, or if so, it has never been approved by this department as a valid rule or regulation as is required by the Administrative Practice Act. And at any rate, the statement is not correct as we view the law.

Section 20-0301 of the 1943 Revised Code says:

"No resident of this state, except as otherwise provided in section 20-0302, shall:

(1 and 2 not pertinent)

"Catch, take, or kill any protected fish without having a resident fishing license as prescribed in this chapter."

Section 20-0601 of the 1943 Revised Code reads as follows:

"FISH WHICH ARE PROTECTED. No person shall take, attempt to take, catch, or kill any species of trout or landlocked salmon, bass, crappies, sunfish, wall-eyed pike, northern pike, or perch except during the open or lawful season for the taking thereof as provided in this chapter."

Then section 20-0603 sets forth the seasons for taking protected fish.

A fishing license is only needed for the taking of protected fish. Protected fish are specifically named by statute. The reasons for the taking of protected fish are mentioned. The clear implication of these statutes is that nongame fish or rough fish or unprotected fish may be taken at any time without a fishing license.

Even though the reference made by the Game and Fish Department that a license is needed for the taking of nongame or rough fish were considered a rule or regulation of the department, it could not possibly be valid because it contradicts the clear and unambiguous language of sections 20-0301 and 20-0601 of the 1943 Revised Code.

It is apparently the purpose of the statute to protect game fish, game animals, and game birds, and all those that are not protected are not considered as being game fish, birds, or animals and hence not within the terms of the law.

It is, therefore, still the opinion of this office that for the taking of nongame fish or rough fish no fishing license is necessary, and that rough fish or unprotected fish may be taken at any time.

P.O. SATHRE

Attorney General