FISH AND GAME LEGISLATION IN IOWA

I

INTRODUCTION

In the Territorial and early Statehood days of Iowa fish were caught and game was hunted not alone for the sake of the sport, but largely to provide food. The idea of protecting or fostering the wild-life of Iowa was far removed from the minds of the Iowa legislators. Indeed game and fish were so abundant that the suggestion of legislative regulation of hunting and fishing would doubtless have been looked upon as purely visionary. An early settler in Iowa Territory wrote as follows:

> Our rivers and creeks abound with excellent fish, among which are speckled trout, white perch, black and rock bass, pike, catfish, shad, red horse-sucker, white-sucker, eels, sturgeon, shovel-nose sturgeon, and numerous other varieties . . . .
>
> The wild turkey . . . . may frequently be seen in all parts: Turkey River derives its name from the numerous congregation of these "gobblers" upon its borders.
>
> The prairie hen abound in great numbers . . . . I have often purchased them in the Burlington market for 25 cents per dozen; the meat is tender, and its flavor delicious . . . .
>
> Partridges . . . . abound throughout the territory . . . .
>
> The woodcock is frequently met with . . . .
>
> Geese, ducks, swans, loon, pelican, plover, snipes, &c., are among the aquatic birds that visit our rivers, lakes, and sluices . . . .
>
> Foxes, racoons, opossums, gophers, porcupines, and squirrels of various kinds, are also numerous . . . . The muskrat is found in every part of the territory, and common rabbits abound in every thicket and roadside . . . . Deer are also quite

numerous, and are valuable, particularly to that class of our population which have been raised to frontier life; the flesh affording them food, and the skins clothing. No sight can be more captivating to the traveller, than to witness a flock of deer gracefully bounding over the prairies with the fleetness of the wind.[1]

With such conditions, any legislative policy other than one of "laissez-faire" so far as the wild-life of early Iowa was concerned would have met with disapproval. It must have been evident, to be sure, even in those early days, that with the increase of the population and its accompanying transformation of the haunts of wild-life into habitable regions, fish and game would not always be as abundant as in pioneer days. But mankind has never been particularly far-sighted; in the field of law-making it is perhaps not inaccurate to say that the guiding principle has unconsciously been, "Sufficient unto the day is the legislation thereof".

As late as 1858, in fact, the Senate of the Seventh General Assembly summarily tabled a bill which apparently aimed to provide for a careful study of the bird and animal life of Iowa, perhaps with a view to making such a study the basis for the determination of a legislative program looking toward the perpetuation of the wild-life of Iowa.[2] Later in the session the measure was called up by one of the Senators, apparently in a facetious mood, and not a little sport was had with the bill. The Senators began by offering amendments increasing the original appropriation the bill carried to an outlandish figure. Then one member moved to amend by adding the following: "The person authorized to carry out the provisions of this act be required to catch the *Giasticutus, the sand hill Crane,*

1 Newhall's *Sketches of Iowa,* pp. 29, 32, 33.

2 *Journal of the Senate,* 1858, pp. 170, 247.

the Katy Did, and the large Mosquito." This motion prevailed[3] and thus the bill was buried amid an atmosphere of levity.

Indeed legislation providing for the destruction of wild-life almost antedates that concerned with its protection. For the early law-makers seemed to be far more concerned over the current problem of protecting the sheep from the ravages of the wolves than over the visionary idea of insuring later generations of Iowans fish and game in reasonable abundance. And the agitation for bounties on wolves begun in the Fourth General Assembly continued until a bounty act was finally passed by the Seventh General Assembly.[4]

But the opposition the bounty bills encountered is evidence that the destructiveness of the wolf was not taken too seriously by some of the earlier legislators. This was due in some measure, perhaps, to the suspicion that the motive behind the bills was to some extent prompted by a desire to provide the hunter with pin-money. And the following amendment to a bill for the destruction of wolves offered in the Iowa Senate in 1856 by one of the bounty-law skeptics doubtless provided not a little merriment to the law-makers:

> That any wolf or other voracious beast which shall feloniously, maliciously and unlawfully, attack with intent to kill, or do great bodily injury to any sheep, ass, or other domestic animal shall on being duly convicted thereof, be declared an enemy to our Republican institutions, and an outlaw, and it shall be lawful for the person aggrieved by such attack, to pursue and kill such beast wherever it shall be found, and if such beast unlawfully resist, the injured party may notify the Governor, who shall thereupon call out the militia of the State to resist said voracious beast, and if the

[3] *Journal of the Senate,* 1858, pp. 606, 607.

[4] *Laws of Iowa,* 1858, Ch. 62.

militia of the State should be overcome in such battle, then the Governor is authorized to make a requisition upon the President of the United States, for troops.[5]

It is, however, to the credit of Iowa that at a comparatively early date in the history of the State the legislature turned its attention to the preservation of Iowa's wild-life. The first Iowa law concerning game was enacted in 1857, and the first with respect to fish in 1862.[6] Since that time fish and game legislation has in general followed two main lines of development. The first of these involves those laws which provide for the protection of fish and game by limiting hunting and fishing. The second comprises that legislation which seeks to increase the natural supply of fish and game by making provision for artificial propagation and related expedients. The first is negative, the second positive; both are needful in any comprehensive wild-life legislative program. In the organization of this thesis the twofold aspect of the legislation to be considered has been kept in mind.

An historical record of the fish and game laws of Iowa is a good example of what may be called evolutionary legislation. The first laws were passed when but little of the wild-life of Iowa seemed to require governmental protection, when there were standing fish and game committees in neither the House nor the Senate and when there was no fish or game administrative organization of any sort. From these simple beginnings the legislation has expanded to a point where, in the *Code of 1924*, the laws concerning fish and game comprise ninety-one sections and eleven pages. To portray to the best advantage this evolutionary character of the legislation, it has seemed wise to follow the

[5] *Journal of the Senate*, 1856, p. 123.

[6] *Laws of Iowa*, 1856-1857, Ch. 164, 1862, Ch. 4.

chronological plan of recording legislative acts and administrative procedure.

Finally it is hoped that this thesis, in addition to whatever historical interest it may have, will, by indicating the trend of fish and game legislation in the past, suggest to some degree the course which should be taken by the wild-life laws of the future.

II

THE EVOLUTION OF THE FISH AND GAME DEPARTMENT

This chapter might have been headed "The Organization of the Fish and Game Department", but such a title would not have been sufficiently comprehensive. For the object of this chapter is not only to explain the development of the department itself, but, by going back many years before there was even a suggestion of a fish and game department, to relate the steps in the acquirement of a legislative attitude with respect to the problem of the perpetuation of Iowa's wild-life which were to lead finally to the establishment of an adminstrative department.

Prior to the Twelfth General Assembly there was no fish or game committee, special or standing, in either the House of Representatives or the Senate. Bills relating to fish or game in either house had, in general, been referred to the Committee on Agriculture, with the exception of those involving the expenditure of public funds, which had been referred to the Committee on Appropriations.

Reference of fish and game bills to the agricultural committees, however, was scarcely a logical procedure. It could be justified, to be sure, on the grounds that the bills pertaining to fish and game introduced in those early days were few in number, and that a goodly portion of the bills

which did refer to wild life aimed, as noted in the preceding chapter, at the destruction of wolves because of their menace to the farmer. But with the increase in the number of wild-life bills introduced, and the shift in emphasis from wolf destruction to wild animal conservation, the need for a more specialized consideration of bills pertaining to fish and game became evident.

The House was the first to recognize this need. On January 25, 1868, during the session of the Twelfth General Assembly, a Special Committee on Game was appointed by the chair; and in the following General Assembly a Special Committee on Fish was appointed in the same manner.[7]

But if the House had taken the lead in the matter of special committees on fish and game, the Senate was the first to appoint standing committees on these subjects. In the Fifteenth General Assembly a resolution was offered in the Senate to the effect that a Committee on Fish and Game be added to the Senate standing committees, and on January 28, 1874, its members were announced. Just one day later, however, the House followed suit in providing for a standing Fish and Game Committee.[8]

A law, providing for a State Board of Fish Commissioners, enacted by the Fifteenth General Assembly, marked the beginning of the fish and game department itself. A bill introduced in the House by Representative Jacob W. Dixon, aside from its provisions relative to organization, comprised various protection and propagation clauses which will be considered in subsequent chapters. The newly appointed Fish and Game Committee, to which the bill was referred, reported the bill favorably, and it was passed by a large

[7] *Journal of the House of Representatives,* 1868, p. 118, 1870, p. 294.

[8] *Journal of the Senate,* 1874, pp. 10, 35–37; *Journal of the House of Representatives,* 1874, pp. 91, 106.

majority. In the Senate, despite the fact that the bill was compelled to run the gauntlet of the Sifting Committee, it triumphed by a vote of 39 to 7.[9]

The act provided for the appointment by the Governor for a term of two years of "three competent persons who shall be known as the State Fish Commissioners". The duties of the Commissioners were declared to be two-fold — fish protection and fish propagation. That the diminution of the supply of fish in Iowa waters was already regarded as a matter of concern is evidenced by the declaration in the act that it shall be the duty of the Commissioners "to forward the restoration of fish to the rivers and waters of this state, and to stock the same with fish as they may be supplied with means for that purpose by the United States fish commissioners and by societies and individuals interested in the propagation of fish in the waters of the state." The salary of each Commissioner was fixed by the act at $200 per year.[10]

But the Fish Commission was destined to be of short duration. The very next Assembly — the Sixteenth — passed an act declaring that in place of the "three competent persons" provided for by the act just discussed there should be but one "competent person". The salary of the Commissioner was fixed at $1200 annually.[11]

An examination of the first report of the State Fish Commissioners (required by the act authorizing their appointment), reveals the reason for the change from the board of three to the single commissioner plan. It appears that the board had organized by electing one of their number

[9] *Journal of the House of Representatives*, 1874, pp. 239, 456, 489, 490; *Journal of the Senate*, 1874, pp. 345, 352, 415.

[10] *Laws of Iowa*, 1874 (Public), Ch. 50.

[11] *Laws of Iowa*, 1876, Ch. 70, Sec. 12.

president, another treasurer, and a third secretary and superintendent.[12] The superintendent had been authorized to "attend to the practical work of the commission"; and an examination of the first report reveals unmistakably that he had done so. Indeed it is apparent from the report that the accomplishments of the Commission were essentially the work of the secretary and superintendent, the two other members having served in an almost purely advisory capacity. The legislature simply gave legal sanction to a situation which already virtually existed.

Legislation of the Sixteenth and Seventeenth General Assemblies, as will be pointed out in subsequent chapters, added materially to the responsibilities of the Commissioner. Doubtless partly on this account and also because of the growth of popular interest in fish culture, the Eighteenth General Assembly made provision for an Assistant Fish Commissioner. Like his superior, the assistant was to be appointed by the Governor for a two-year term. Although his work was to be under the general direction and supervision of the Commissioner, the assistant was to reside in Dickinson County and was to maintain a fish hatching house at "some suitable place" in that county, presumably, of course, within easy access of Spirit Lake. The modest salary of $600 was to be paid only "after it is made to appear to said [Executive] council that the work of hatching and rearing fish is being successfully carried on at said establishment". In addition to his specific and primary duty of fish culture, the Assistant Commissioner was required to enforce the fish laws, and, in general, to supervise the fish interests in that part of the State to which he was assigned by the law.[13] That the provision for an

[12] *Biennial Report of the State Fish Commissioners of Iowa,* 1874-1875, p. 10.

[13] *Laws of Iowa,* 1880, Ch. 156.

Assistant Commissioner had the approval of the people — particularly those of northern Iowa — is evidenced from the petitions which were sent to the House requesting such action by the Eighteenth General Assembly.[14]

But the department was not without its opponents. During the Twentieth General Assembly two bills looking toward the abolition of the Fish Commission (as the department was still officially designated) were introduced in the House. One of these bills, although the Committee on Fish and Game recommended that it be indefinitely postponed, was actually approved by two of the five members of the committee, a minority report favoring the passage of the bill being presented by them. The other bill, covering the same subject as the first, was indefinitely postponed.[15] In the Senate no such violent opposition to the department appears to have developed.

In the House, however, opposition reappeared in the course of the Twenty-first General Assembly, when another attempt was made to abolish the department. The Fish and Game Committee recommended that this bill, like the one in the previous Assembly, be indefinitely postponed, one member of the committee dissenting. The reason given for his position doubtless expresses the general attitude of those who questioned the value of the department. He said: "I understand from the report of the present Fish Commissioner that the stocking of the creeks and rivers with fish from which the people was to reap benefits sufficient to pay them for the money expended has proved a total failure, and with nearly forty thousand dollars expended with ten years experience ought to be sufficient to satisfy the most credulous that the fish commission is a

[14] *Journal of the House of Representatives,* 1880, pp. 13, 28, 128.

[15] *Journal of the House of Representatives,* 1884, pp. 64, 123, 212, 213.

failure; for this reason I recommend that the bill do pass."[16]

That the legislature did not act upon his recommendation may be put down as due to several considerations. The report referred to had been submitted by a Commissioner who was unalterably opposed to the introduction of new varieties of fish into Iowa waters and his report rather scathingly criticized the former Commissioner for his efforts to plant in Iowa rivers and lakes fish previously unknown to them. And it must be said that this criticism was not entirely unfounded. But the report in question did not condemn the artificial propagation of the fish native to Iowa, which the former Commissioner had ardently promoted. Indeed, it emphasized the need for such work. The minority report on the bill to abolish the department also failed to take into consideration the second primary function of the Fish Commissioner — that of fish protection. To have abolished the department at that time would not only have brought an end to the culture, so auspiciously begun, of the native fish of Iowa, but would also have done away with the agency to which the enforcement of the fish laws was specifically entrusted, at a time when the people of the State were clamoring for such enforcement.[17]

The Twenty-first General Assembly, however, though not abolishing the department itself, did bring to an end the office of Assistant Fish Commissioner. The initiative in this matter was taken by the Senate where two bills with this object in view were introduced, one of which was endorsed by the Fish and Game Committee.[18] The bill which

[16] *Journal of the House of Representatives,* 1886, pp. 142, 427.

[17] *Biennial Report of the State Fish Commission of Iowa,* 1883–1885, pp. 5–15, 26, 27.

[18] *Journal of the Senate,* 1886, pp. 319, 370, 530, 531.

finally became a law, however, was a substitute for one of the original bills, and was put forward by the Senate Committee on Appropriations. In addition to declaring the office of Assistant Fish Commissioner abolished, the act provided for the location of the State fish hatching house at Spirit Lake, rather than at Anamosa as formerly, and for the sale of the hatchery property in Jones County, except such part of it as could be readily transferred to Spirit Lake. Thus, although the office of Assistant Fish Commissioner was abolished by the act, the center of activities of the Commissioner was transferred to the place which had up to this time been the headquarters of the assistant.[19]

The "war on the fish department" was continued during the Twenty-third General Assembly when both in the House and in the Senate bills were introduced providing for the abolition of the Commission. All of these were reported with the recommendation of indefinite postponement,[20] and there were no minority reports favoring the bills, as there had been with respect to the similar bills of the Twentieth and Twenty-first General Assemblies.

No change in the organization with respect to fish and game matters was made until 1897 when the Twenty-sixth General Assembly, in extra session for the purpose of amending and codifying the laws, changed the Fish Commissioner's title to that of Fish and Game Warden and increased his term from two to three years. This change had been urged by Commissioner T. J. Griggs who wrote that he had received "two hundred or more letters from all parts of the State" requesting him "to come immediately and enforce the game law, as the manner in

[19] *Laws of Iowa,* 1886, Ch. 155.

[20] *Journal of the House of Representatives,* 1890, pp. 145, 356; *Journal of the Senate,* 1890, pp. 93, 513.

which game was being slaughtered out of season was a disgrace to the State.''[21]

The same act gave legal authorization to the appointment of deputies by the Warden, a power which had already been exercised extralegally. They were to ''serve without expense to the state'' and were ''to report to the warden all violations of the fish and game laws and aid him in the enforcement thereof.''[22]

This provision for deputy wardens, however, was deficient in two respects. It failed to endow the deputies with the power necessary for them to be truly effective law enforcement agents; indeed their powers were no greater than those of the ordinary citizen. In the second place, the act did not provide for their regular payment. Their only possible compensation was a part of the costs which every person prosecuted and convicted for violation of the fish and game laws was expected to pay in addition to his fine. But even such payment was uncertain.

The Wardens, as might be expected, consistently urged the placing of the deputy system upon a more substantial basis. As far back as 1882 the Assistant Fish Commissioner had said in this connection: ''I would suggest that the law be made so as to have fish and game wardens, as is now being done in various States. Give these wardens ample powers and reasonable remuneration — enough so that good men would accept the place, and see that the laws are enforced.''[23]

Failure of the act of 1897 to endow the deputies with suf-

[21] *Code of 1897*, Sec. 2539; *Biennial Report of the State Fish Commission of Iowa*, 1892-1893, pp. 15, 16.

[22] *Biennial Report of the State Fish Commission of Iowa*, 1894-1895, p. 10; *Code of 1897*, Sec. 2562.

[23] *Biennial Report of the State Fish Commission of Iowa*, 1883–1885, p. 61.

ficient power was remedied in some measure by the State legislature in 1898 when an act of the Twenty-seventh General Assembly authorized the deputies to seize *without a warrant* fish or game illegally taken or unlawful devices used in such taking. This act will be examined more closely in another chapter.[24] But this act did nothing to remedy the second defect in the act of the Twenty-sixth General Assembly — the non-provision for the regular payment of the deputies. It was chiefly because of this that the Fish and Game Warden said: "In many instances the deputy warden system . . . . is a failure".[25]

"The system", said a later Warden, "is wrong and should be changed". And in a later report the same Warden remarked that under the prevailing status of deputy wardens, it was impossible "to secure efficient men for this work . . . . and it will never be any different until the system . . . . has been changed."[26]

Finally, in 1909, the efforts for reform were rewarded, and the legislature made definite provision for the regular payment of the deputies. They were to receive $2.50 per day in addition to their actual and necessary expenses — a very modest stipend, to be sure, but sufficient to effect the much desired change in the status of the deputies.[27] It must have been with peculiar pleasure that the Warden wrote:

> I find much more interest manifested by them [the deputies] in their work from this fact [the provision for their regular payment]

[24] *Laws of Iowa,* 1898, Ch. 64.

[25] *Biennial Report of the State Fish and Game Warden of Iowa,* 1898-1899, p. 6.

[26] *Biennial Report of the State Fish and Game Warden of Iowa,* 1902-1903, p. 10, 1907-1908, p. 6.

[27] *Laws of Iowa,* 1909, Ch. 153, Sec. 9.

and the knowledge that the responsibility of enforcing the law now rests with them as State officers. They feel that the purpose and enforcement of the fish and game laws are to protect the wild life of the forest, fields, lakes and streams, from the wanton and wasteful destruction, and as it has been settled in many courts that the State fish and wild game belongs to all the people and not to a favored few, they understand that their duty is to see that all persons, no matter what their station in life, obey the laws of the state.[28]

In 1909, by another act of the legislature, the Fish and Game Warden, along with a number of other appointive State officials, was declared to be subject to removal for any one of nine specific reasons. Another act of the same Assembly provided that the Warden should be compensated for "his necessary traveling, contingent, and office expenses" in addition to his salary.[29] Two years later the General Assembly increased the Warden's salary from $1200 to $1600, the Thirty-fifth General Assembly raised it to $2200, the Thirty-eighth to $2400, and the Thirty-ninth to $2700.[30]

The department was further expanded in 1913 when the legislature provided for three assistant fish and game wardens, the annual salary of each being originally fixed at $1200.[31]

Recognition by the legislature of the importance of the office of Fish and Game Warden was clearly evident when the Fortieth General Assembly, in extra session in 1924 for the purpose of amending and codifying the laws of the State, increased the Warden's term of office from three to

[28] *Biennial Report of the Fish and Game Warden of Iowa,* 1909-1910, p. 5.

[29] *Laws of Iowa,* 1909, Chs. 77, 152.

[30] *Laws of Iowa,* 1911, Ch. 116, 1913, Ch. 203, 1919, Ch. 272, 1921, Ch. 340, Sec. 33.

[31] *Laws of Iowa,* 1913, Ch. 203.

four years and made his appointment subject to confirmation by the Senate.

Ever since 1897 when provision for deputy wardens had first been made the Warden himself had been permitted to fix the number of these, though in practice he had, of course, been restricted by the amount of money available for this purpose. But in accordance with the policy of the Director of the Budget the Forty-first General Assembly limited the number of deputies in the fish and game department to forty.[32]

Before concluding this chapter a word should be added concerning the method of legislative provision for the financial support of the fish and game department.

Beginning with the Fifteenth General Assembly in 1874 and continuing (with an exception to be noted in the chapter on fish propagation) until the Thirty-third General Assembly in 1909, a biennial appropriation was made for the work of the department. With the inauguration of the non-resident hunters' license system in 1900 (to be discussed in detail in the chapter on game protection) provision was made that the license fees derived from this source should be used "to defray the expenses of enforcing the law for the protection of game";[33] but biennial appropriations for the general work of the fish and game department continued to be made.

With the passage of the resident hunters' license law in 1909, the legislature provided that "any appropriation made by the general assembly for the use of the state fish and game warden shall not be drawn upon until the fund arising from license fees shall be exhausted." The Thirty-fourth General Assembly provided for the payment of the

[32] *Code of 1924*, Sec. 1708; *Laws of Iowa*, 1925, Ch. 218, Sec. 55-a2.

[33] *Laws of Iowa*, 1900, Ch. 86.

salary of the Warden himself from the fund created by the license fees.[34] Since 1909, in fact, not a penny has been appropriated for the regular work of the fish and game department, though the legislature continues to fix the salaries of the Warden, his assistants, the keeper of the game farm, the deputies, and the employees of the department.[35] But neither the money for these salaries nor the funds necessary to defray the other expenses of the department are appropriated from the State treasury, for the department is financially self-supporting. The people who hunt and fish pay for its maintenance by fees and licenses.

III

FISH PROTECTIVE LEGISLATION

Only within very recent times have the general fish protective laws of Iowa applied to those portions of the Mississippi and Missouri rivers within Iowa's jurisdiction and to the boundary portion of the Big Sioux and Des Moines rivers. For these four rivers — or, more precisely, for the boundary parts of them — special legislation has been enacted. The laws pertaining to the protection of fish in the interior public waters of the State will be first considered, after which the legislation concerning the boundary rivers will be reviewed and analyzed.

THE INTERIOR WATERS OF IOWA

The first fish granted protection by the legislature of Iowa was the trout. A bill to provide for this protection was introduced in the Senate of the Ninth General Assem-

[34] *Laws of Iowa*, 1909, Ch. 154, Sec. 12, 1911, Ch. 116, Sec. 1.

[35] *Laws of Iowa*, 1919, Ch. 272.

bly, read the prescribed two times, and referred to the Committee on Agriculture. Four days later Senator A. M. Pattison, the chairman of the committee, reported that "The Committee on Agriculture to whom was referred Senate File No. 43 . . . . have instructed me to report the same back without amendment, and unanimously recommend its passage." To permit immediate action on the bill, the rule regularly applying was suspended, the bill was read a third time, and was then passed by a vote of 33 to 1.[36] Two days later the House, without amending the bill and apparently without debate, took similar action, the vote of that body being 76 to 1.[37] On February 5, 1862, the bill received the Governor's signature. Thus auspiciously was the policy of the protection of game fish in Iowa waters inaugurated.

The bill prescribed that the only lawful means of taking trout was by hook and line. To emphasize this restriction, there were listed a number of the devices previously used for trout fishing which were declared illegal. These included the "net, seine, weir, basket, spear grapple, trap or any other device, whatsoever, except a hook and line." Between September 15th and December 31st of each year no trout were to be taken, even by hook and line; and the having in possession of any trout during this period was to be regarded as "prima facie" evidence of the illegal taking of the same. The fine for each trout illegally taken was fixed, in ordinary cases, at three dollars; but if a property owner brought to justice a violator of the law taken in the act upon the owner's premises, then the fine might be any sum between three and fifty dollars, "to be paid one moiety to the complainant and one moiety to the

[36] *Journal of the Senate,* 1862, pp. 97, 114.

[37] *Journal of the House of Representatives,* 1862, pp. 188, 189.

Clerk of the District Court of the county for the use and benefit of the schools of said county.''[38]

Perhaps the greatest artificial menace to the fish was the mill-dam. From time immemorial mills have been built on the banks of rivers to take advantage of the power provided thereby. But the utilization of such power, of course, requires the building of a dam. Now the ordinary mill-dam is an effective barrier to the passage of fish. For this reason at an early date it was urged that fishways — or passages — be embodied in dams, thus facilitating the movement of the fish up and down the rivers.

As early as the Tenth General Assembly petitions were received in the Senate asking for a law regulating the construction of mill-dams in such a way as to require provision for fishways. Indeed a bill to this effect had already been introduced, although the Committee on Agriculture to which the bill was referred recommended indefinite postponement of the subject of fishway legislation. But some days later — perhaps because a second petition had been received making the same recommendation as the first — the bill was referred to a special committee of five which apparently never reported it.[39]

The agitation for mill-dam regulation was continued in 1866 when a petition was received by the legislature from one hundred and fifty-one citizens of Black Hawk County urging that a law be enacted ''compelling the owners of dams on the Cedar River to construct in said dams an opening which will permit the passage of fish through or over them''.[40] In this case the petition was referred to the Committee on Commerce ''to rest in peace''.

[38] *Laws of Iowa*, 1862, Ch. 4.

[39] *Journal of the Senate*, 1864, pp. 121, 301, 309, 420.

[40] *Journal of the Senate*, 1866, p. 288.

But the general issue was by no means dead. Petitions looking toward the enactment of fish protective laws were received in the House during the Eleventh General Assembly, and a bill with this end in view was introduced. A motion to table this bill being defeated, a vote was taken upon it. Ten more voted for the bill than against it, but since a constitutional majority was lacking — eighteen representatives being absent at the time — the bill was lost.[41] During this session a bill was introduced in the Senate which would have prohibited fishing with seines or continuous nets, but it was ahead of its time and seems never to have been reported out of the Committee on Commerce to which it had been referred.[42]

The fight to secure a fish protective law was carried a step further in the Twelfth General Assembly and such a bill was actually passed by the House.[43] But it was adversely reported by the Judiciary Committee of the Senate, and despite petitions urging the passage of such a law, it was tabled by a vote of 29 to 19.[44]

The struggle continued in the Thirteenth General Assembly, the petitions received asking particularly for the construction of fishways in dams.[45] This time, in response to the demand, a bill was introduced in the House by the chairman of the Special Committee on Fish, and although the bill did not become a law the following report of the committee at the time of the bill's introduction is worth noting:

> Your Committee to whom were referred several petitions for the enactment of a law for the preservation of fish report that they

[41] *Journal of the House of Representatives,* 1866, pp. 467, 702.

[42] *Journal of the Senate,* 1866, p. 312.

[43] *Journal of the House of Representatives,* 1868, pp. 210, 266.

[44] *Journal of the Senate,* 1868, pp. 286, 435, 454, 455, 527.

[45] *Journal of the House of Representatives,* 1870, pp. 107, 340.

have had the same under consideration, and that they have prepared a bill in accordance with the prayer of said petitioners, and they recommend that it do pass.[46]

The bill passed the House by a vote of 51 to 33, but a motion to reconsider prevailed and pressure of other business apparently prevented the bill from again coming to a vote.[47] In the Senate a bill for fish protection was allowed to die in the Committee on Agriculture to which it had been referred.[48]

In the Fourteenth General Assembly, however, the struggle for a fish protection law met with a measure of success. A bill which aimed primarily to discourage the use of fishing devices other than that of hook and line having passed the House,[49] the following amendment was offered in the Senate: "*Provided*, That the owner of every dam across any stream in this State shall build a good and sufficient shute or crossway over such dam."[50]

This amendment was lost, but the bill itself passed the Senate by a vote of 35 to 9,[51] and being signed by the Governor became a law upon its subsequent publication in the newspapers as prescribed in the publication clause of the bill.

The original bill was more drastic than that which was finally enacted. As introduced the bill prohibited the use of any device in fishing except that of hook and line.[52] But as finally enacted, the bill permitted the use of the spear

[46] *Journal of the House of Representatives*, 1870, pp. 521, 526.

[47] *Journal of the House of Representatives*, 1870, pp. 522, 526.

[48] *Journal of the Senate*, 1870, p. 183.

[49] *Journal of the House of Representatives*, 1872, p. 663.

[50] *Journal of the Senate*, 1872, p. 561.

[51] *Journal of the Senate*, 1872, p. 562.

[52] *Journal of the House of Representatives*, 1872, p. 103.

and the snare, though it barred the "net, sein, weir, basket, trap, or any other device whatsoever" with the exceptions noted above. A fine of five dollars was imposed for every fish taken in violation of this provision. The clause concerning violators who were also trespassers was similar to that of the act passed by the Ninth General Assembly pertaining to trout.[53] The Fourteenth General Assembly, in extra session for the purpose of codifying and revising the laws of Iowa, added the gun to those devices by which fish might be legally taken.[54]

But during the Fifteenth General Assembly, in which various petitions asking for the further protection of fish had been introduced,[55] a law was enacted which, though it by no means solved the problem of provision for the free passage of fish, made a good start in this direction. Two distinct problems were presented with respect to fishways, —providing for fishways in dams not yet constructed and providing for fishways in dams already constructed. The legislature faced the first of these problems squarely and enacted the following:

> It shall be the duty of any person or persons, or corporations, hereafter erecting or constructing any dam in any of the rivers within the state . . . . to put in or upon the same, fish-ways, under the direction and approval of said fish commissioners, without which every such dam shall be deemed a public nuisance . . . . and the person or persons constructing a dam, in violation of this section, shall be liable to a fine of ten dollars for each day such dam shall be continued without a fishway, such as shall be required by the commissioners under this act.[56]

[53] *Laws of Iowa*, 1872, Ch. 54.

[54] *Code of 1873*, Sec. 4052.

[55] *Journal of the Senate*, 1874, p. 154; *Journal of the House of Representatives*, 1874, pp. 132, 159, 307.

[56] *Laws of Iowa*, 1874, Ch. 50, Sec. 5.

But in handling the second problem — that of making provision for fishways in dams already constructed — the legislature was far more cautious. It merely directed the Fish Commissioner to make a study of the problem and to recommend to the next General Assembly ways and means whereby existing dams might be provided with fishways "without doing injustice to the owners of such dams."[57]

The same act prohibited the use of other obstructions to the passage of fish, such as the placing across streams, ponds, or lakes of seines, nets, or weirs. And the use of all nets or seines of a mesh less than two inches was prohibited, except for the catching of minnows for bait. The poisoning of fish by means of lime, ashes, and other substances was also forbidden. Fishing within half a mile of dams containing fishways except with hook and line or spear was declared to be illegal.[58]

In 1875, as has been pointed out in a previous chapter, the first report of the Fish Commission was made public. In this report — as, indeed, in many subsequent biennial reports — much emphasis was placed upon the need for more drastic fishway legislation. There was some question as to whether the legislature had sufficient power to require owners of dams constructed prior to the act of the Fifteenth General Assembly to construct fishways therein. The report of the Fish Commission quoted extracts from opinions of cases which had arisen in the Supreme Court of the United States and the supreme courts of the States of Massachusetts and Pennsylvania in which the right of the legislature to require the incorporation of fishways in dams which were not so provided was conceded. In view of this fact the report went on to say:

[57] *Laws of Iowa*, 1874, Ch. 50, Sec. 2.

[58] *Laws of Iowa*, 1874, Ch. 50, Secs. 6, 8, 9.

It is evident that unless fish-ways are made at each dam, the law will work injustice to some. It is impossible to carry out the object of a general improvement without the co-operation of all.[59]

Despite this strong recommendation, the Sixteenth General Assembly took no forward step with respect to fish-way legislation. In so modifying the act of the Fifteenth General Assembly, however, as to permit the erection of obstructions to the passage of fish in specific cases when so ordered by the Commissioner,[60] the legislature did comply with another recommendation of the first biennial report. The reason for this recommendation appears in a letter to the Superintendent of the Fish Commission, a portion of which is as follows:

I have a peculiar fish question to submit for your consideration. Our lake is now quite high; the water is running out, and with it thousands of fish . . . . It seems that our legislators never entertained the idea that fish would run out of the lakes by the ton and never return or make efforts to get back . . . . The fish are going, and if we threaten to stop them we are threatened with prosecution under the very law intended to protect fish, and encourage fish culture.[61]

The fish protection act of the Sixteenth General Assembly also prohibited the taking of bass or wall-eyed pike between April 1st and June 1st; and closed the months of November, December, and January to the taking of salmon and trout, thus protecting the latter for a greater part of the winter than had the act of the Ninth General Assembly.[62]

In his second biennial report the Fish Commissioner

[59] *Biennial Report of the State Fish Commissioners of Iowa,* 1874-1875, pp. 7–9.

[60] *Laws of Iowa,* 1876, Ch. 70, Sec. 3.

[61] *Biennial Report of the State Fish Commissioners of Iowa,* 1874-1875, p. 35.

[62] *Laws of Iowa,* 1876, Ch. 70, Sec. 6.

resumed agitation for a more effective fishway law. He again called attention to the fact that the existing law concerning fishways did not apply to dams built before the law was enacted. At the same time the Commissioner pledged his coöperation to owners of mill-dams with a view to the embodying in their dams fishways which would be both efficient and moderate in cost.[63]

Bills comprising these recommendations were introduced into both the House and the Senate of the Seventeenth General Assembly. The House bill was favorably reported by the Fish and Game Committee, but no action was taken concerning it.[64] In the Senate two bills involving the construction of fishways were introduced. One of these did not come to a vote, but the other was passed the day it was introduced. The vote of 35 to 3 showed that sentiment for the bill was strong.[65] In the House the bill encountered some degree of opposition. A motion was made to table it, but this was lost by a vote of 33 to 60. Then two amendments were offered to weaken the bill, but these were both lost. The final vote in favor of the measure was 59 to 33.[66]

The act provided that "within a reasonable time" any owner of a dam must construct "over or across" it a "suitable fishway", and that any dam which was not so altered in accordance with the act was to be "declared a nuisance" and "abated accordingly". A fine of from five to fifty dollars was imposed for the first offense; and of not less than twenty dollars for subsequent violations.[67]

63 *Biennial Report of the State Fish Commission of Iowa*, 1875–1877, pp. 35–37.

64 *Journal of the House of Representatives*, 1878, pp. 85, 453.

65 *Journal of the Senate*, 1878, pp. 113, 214, 313, 440, 441.

66 *Journal of the House of Representatives*, 1878, pp. 613, 614.

67 *Laws of Iowa*, 1878, Ch. 188.

But, as pointed out by the Fish Commissioner, the act was unsatisfactory in certain respects. For one thing the terms used were too general. Just how, for instance, was the word "suitable" to be defined; and who was to determine whether or not a fishway constructed under the provisions of the act actually was suitable? Again, how long a period was "a reasonable time"? In the second place, no authority was granted either to the Fish Commissioner or to anyone else to enforce the act. Consequently, in reply to communications stating that the law was not being obeyed and asking its enforcement, the Commissioner was compelled to reply that he lacked the necessary authority. A letter was also received from the chairman of the Fish Commission of Minnesota pointing out that the passage of fish up the streams having their source in Minnesota but flowing into Iowa was impeded by the dams in Iowa which lacked fishways; and that Minnesota was thereby failing, in large measure, to benefit from its stocking of those streams with trout and other game fish.[68]

And so in the early part of the session of the Eighteenth General Assembly two bills, each designed to strengthen the existing fishway legislation, were introduced in the Senate. One of these was reported unfavorably; and the other was at first lost by a vote of 19 to 21, but on motion to reconsider the bill was carried by a majority of nine.[69]

In the House the Senate bill was favorably reported by the Committee on Judiciary. Two amendments which would have rendered the act non-applicable to streams more than seventy-five feet wide or less than twenty-five miles in length and thus would have weakened the bill were voted down. The original vote on the bill was 50 to 40, one

[68] *Biennial Report of the State Fish Commission of Iowa*, 1877-1879, pp. 9, 54.

[69] *Journal of the Senate*, 1880, pp. 59, 126, 183, 184, 389, 412, 442.

less than a constitutional majority. On reconsideration, however, the bill obtained a constitutional majority and became a law.[70]

This act required that within thirty days of its taking effect the clerk of the board of supervisors of each county should report to the Fish Commissioner concerning the nature of each dam in that county, whereupon the Commissioner should advise the clerk of the county board relative to the type of fishway which should be constructed in each of the dams so reported. The county clerk was then to serve notice on the owner of each dam to proceed to construct a fishway in accordance with the recommendations of the Commissioner. If the fishway had not been constructed by the owner of any dam within sixty days of the serving of notice, the board of supervisors were forthwith to construct the fishway themselves, the cost to be paid by the owner of the dam, together with an additional twenty per cent of the cost to serve as a penalty.

The act further provided that the county boards of supervisors were to visit the dams in their respective counties periodically with a view to insuring the proper maintenance of the fishways built therein, the owners being required, under penalty, to keep their fishways in repair. Interference by any person with "the free and unmolested passage of any fish within one hundred yards of any dam, or in their transit through any fishway" was declared to be a misdemeanor. Non-enforcement of the provisions of the act by the county board members was also declared to be a misdemeanor.[71]

But this law was destined to be short-lived. For one

[70] *Journal of the House of Representatives*, 1880, pp. 567, 616, 666-668, 669, 670.

[71] *Laws of Iowa*, 1880, Ch. 123.

thing, as pointed out by the Fish Commissioner, it was too drastic. It required the building of fishways in every dam, regardless of whether the stream in question contained any fish or not. Apparently so little attention was paid to the law by the county supervisors that the Commissioner was led to state that "it seems quite clear the law is in advance of public sentiment". He went on to recommend that either legislation be enacted which could be so administered that every dam across a stream containing fish would have incorporated in it a fishway, or in lieu of this that all fishway legislation be repealed.[72]

A monster petition was presented in the Senate carrying the names of 7419 citizens of eighty-nine counties, asking for the repeal of the fishway laws on the ground "that said laws are unjust and injurious to the manufacturing interests of the State." In the House a bill to repeal the fishway legislation of the Eighteenth General Assembly was passed by a vote of 93 to 0; and in the Senate the vote on the measure was 42 to 0.[73] Thus, without a dissenting voice in either house, the General Assembly wiped from the statute books a law which had appeared so auspicious at its passage. It should be remembered, however, that the general law concerning fishways passed by the Seventeenth General Assembly continued in force.

With the close of this period of fishway legislation, the Twentieth General Assembly turned its attention to the limitation of spearing and the sale of fish so taken. A bill to this purpose was introduced in the House and was referred to the Fish and Game Committee from which it was

[72] *Biennial Report of the State Fish Commission of Iowa*, 1879–1881, pp. 14–23.

[73] *Journal of the Senate*, 1882, pp. 33, 143; *Journal of the House of Representatives*, 1882, p. 78.

reported, considerably strengthened by amendments. It passed both the House and the Senate by large majorities.[74] This bill prohibited spearing from the beginning of November to the end of May in "any of the permanent lakes or ponds, or outlets or inlets thereto". The second section declared that the buying of fish taken in violation of the above provision was unlawful when "knowingly" done. There were the customary detailed provisions concerning the prosecution of offenders and the penalties to be imposed.[75]

Although the sixth biennial report of the Fish Commissioner included many legislative recommendations such as the extension of the law concerning spearing so as to apply to rivers and streams as well as to lakes and ponds,[76] the only legislation bearing upon fish protection enacted during the session of the Twenty-first General Assembly was an act permitting cities or townships to construct dams across the outlets of meandered lakes within their territory, with the obvious purpose of preventing the escaping of fish therefrom. This act was subsequently amended so as to apply to chains of lakes as well as individual lakes.[77]

The reports of the Fish Commissioner issued between the year 1885 and 1889 were replete with recommendations — specific and general — looking toward the better protection of fish. The most important of these were as follows: forbidding spearing in all State waters between November 1st and the following May 31st, as previously noted; prohibiting the use of explosives, such as dynamite, in the

[74] *Journal of the House of Representatives*, 1884, pp. 74, 139, 163, 164; *Journal of the Senate*, 1884, pp. 265, 266.

[75] *Laws of Iowa*, 1884, Ch. 9.

[76] *Biennial Report of the State Fish Commission of Iowa*, 1883-1885, p. 29.

[77] *Laws of Iowa*, 1886, Ch. 63, 1888, Ch. 108.

taking of fish;[78] making the mere ownership of unlawful nets and seines adequate grounds for prosecuting the owner; providing that the ownership of pike and bass during the closed season be sufficient evidence that the fish had been illegally caught; and more definitely prohibiting the use of seines.[79]

A long act of the Twenty-third General Assembly incorporated a number of these recommendations and other supplementary ones. The taking of fish from the waters of Iowa by any method other than by hook and line (which did not except the trot-line) was declared to be illegal except that buffalo fish and suckers might be speared between November 1st and the following March 1st, and minnows for bait might be taken by the use of a net not over five yards in length. It was specifically pointed out, however, that the term "minnows" was not to be construed so as to include young game fish. The closed season on trout was extended to include the months of February and March, but from April 1st to November 1st trout fishing was to be permitted. The closed season on all other game fish, inclusive of bass, pike, and crappies, was declared to be from November 1st to May 15th.

The use of dynamite and other explosives for the killing of fish was declared illegal. Nets and other fishing devices when "used in violation" of the provisions of the act were subject to seizure by the Fish Commissioner and to destruction by judicial order. Fishing in streams which had been stocked with trout either by Iowa or the United States within one year from the time of the stocking was

[78] *Biennial Report of the State Fish Commission of Iowa*, 1885-1887, p. 11. "The killing of fish by the use of dynamite", said this report, "is perhaps the most wanton destruction known."

[79] *Biennial Report of the State Fish Commission of Iowa*, 1885-1887, p. 11, 1887-1889, pp. 10, 11.

declared to be illegal, provided the streams were posted "by authority of the State Fish Commissioner wherever a public highway crosses such stream." Perhaps of greatest significance, however, was the clause which, by declaring it to be "the duty of the fish commissioner to see that the provisions of this act are enforced", for the first time specifically vested in the office of Fish Commissioner the enforcement of the protective laws. For help in this work he was empowered "to call to his assistance any prosecuting attorney to prosecute all violations of this act in the county where such violations occur."[80]

No legislation of outstanding importance with respect to fish protection was enacted by the Twenty-fourth General Assembly. The Commissioner, indeed, had not deemed the recommending of such legislation expedient. The act passed by the Twenty-first General Assembly, however, permitting the construction by cities or townships of dams across the outlets of meandered lakes, or, as later amended, chains of lakes, was amended to apply to inlets as well.[81]

Throughout the course of the Twenty-fifth General Assembly both the House and the Senate were the recipients of numerous petitions relative to fish legislation. The majority of these opposed any relaxation in the fish protective laws; indeed, at least two asked for more stringent legislation; but two important petitions, one bearing the names of nearly four hundred citizens, urged modification.[82]

So the legislature, as might have been expected, strengthened the law in one particular, and modified it in another.

[80] *Laws of Iowa*, 1890, Ch. 34.

[81] *Laws of Iowa*, 1892, Ch. 46.

[82] *Journal of the House of Representatives*, 1894, pp. 99, 313, 320, 333; *Journal of the Senate*, 1894, pp. 191, 210, 289, 297, 312.

The clause of the act of the Twenty-third General Assembly permitting the spearing of buffalo and suckers during the winter season was repealed; but the closed season on game fish, other than trout and salmon, was limited to the month of April and half the month of May.[83] The latter change was unfortunate, for under this law the bulk of the game fish of the State were exposed to winter fishing, one of the evils which had been emphasized by the Commissioner in his tenth biennial report.[84]

When the prohibition against winter fishing for all game fish, except salmon and trout, was removed by the Twenty-fifth General Assembly, the Commissioner commented as follows:

> When the Iowa legislature changed the law allowing winter fishing, they gave the fishing interests the most serious blow that could possibly have been legally inflicted. The farmers of the state little thought when they asked for the privilege of catching a few fish in the winter, that criminal poachers by the thousands would take advantage of the opportunity to transact a general business of market fishing . . . . In consequence of this winter fishing thousands of fish that should have been spared for the spring spawning were taken and a draught made on the public waters as never before at a season when the fish should have been protected . . . . The law should be changed without delay.

The report went on to declare that "the fish house is an abomination that should be declared a public nuisance and by law ordered destroyed by any peace officer. There were thousands of these houses on the public waters last winter, and were used by unprincipled men in which to slaughter fish in every conceivable method. These houses were made receptacles for spears, snares, grab hooks and every in-

[83] *Laws of Iowa*, 1894, Ch. 65.

[84] *Biennial Report of the State Fish Commission of Iowa*, 1892-1893, p. 16.

genious invention known for the unlawful taking of fish. Their abolishment should be speedy and sure.''[85]

Such a strong recommendation could scarcely go unheeded. And so the Twenty-sixth General Assembly, although it did not abolish winter fishing, did declare fishhouses illegal and also prohibited the use of ''any stove or other means for creating artificial heat'' in the process of fishing through the ice. The penalty for violations was a fine of from ten to fifty dollars and costs, or a jail term of from one to thirty days.[86]

In the same act the legislature attacked another abuse, the abolition of which had also been sought by the Fish Commissioner. This was the use of countless poles and lines at one time by a single fisherman. Indeed the Commissioner had written: ''I have seen one man attending about 150 of these lines, and at the same time had from 500 to 600 pounds of choice fish piled on the ice preparatory to shipping to market.'' Although the Attorney General, in response to a request by the Fish Commissioner, had declared that in his opinion the term ''hook and line'' had been intended by the legislature to be construed as meaning ''one rod and line'',[87] the Twenty-sixth General Assembly settled the question by the following moderate provision: ''No person shall use more than two lines with one hook upon each line in still fishing, trolling, or otherwise.'' The penalty for violation was the same as that for maintaining a fishhouse. The legality of the trot-line was not affected by this act.[88]

It is good to read the commendatory remarks of the Com-

85 *Biennial Report of the State Fish Commission of Iowa*, 1894-1895, pp. 6, 7.

86 *Laws of Iowa*, 1896, Ch. 80, Sec. 1.

87 *Biennial Report of the State Fish Commission of Iowa*, 1894-1895, p. 7.

88 *Laws of Iowa*, 1896, Ch. 80, Sec. 2.

missioner with respect to this act. "It is with pleasure", he wrote, "that we note an increasing sentiment in favor of our fish and game laws. . . . A very commendable law passed by the Twenty-sixth General Assembly was the one providing for the abolishment of the winter fish house. This has resulted in much good, as winter fishing, without the spears, snares, and grab hooks usually hidden about these houses, has been reduced to a minimum."[89]

It will be remembered that the general fish protection act enacted by the Twenty-third General Assembly contained a clause providing for the confiscation of illegal fishing devices when found in use. The law did not permit such confiscation when the devices were discovered by the Commissioner at a time when they were not actually employed in the taking of fish. The weakness of the law in this particular was emphasized in the eleventh biennial report of the Commissioner, which cited two instances of the law's inadequacy. In one case the Commissioner came across a large seine drying on a clothes line in a private yard. Although circumstances pointed most decidedly to the conclusion that the net had been used illegally the night previous in the Des Moines River, the Commissioner could not confiscate the net under the existing law. In relating the other incident, the Commissioner said:

> Last winter I arrested a man on [Lake] West Okoboji who had two . . . . spears in his fish house. A jury discharged him because he swore the spears were not being used to catch or kill fish, but to shove a piece of ice under the water . . . . The fact that the man had these spears in his possession in his fish house on the ice, and one of them in his hands in the water, should have been sufficient evidence to convict. Men do not usually have such devices as spears and seines in their possession without they

[89] *Biennial Report of the State Fish Commission of Iowa*, 1896-1897, pp. 3, 4.

intend to use them, and the law should give an officer power to destroy them wherever found and prosecute their owners.[90]

The Twenty-sixth General Assembly, in extra session for the purpose of revising and codifying the laws, mitigated this evil to some extent by providing that the possession of a spear or seine within ten rods of any of the public waters of the State should constitute "prima facie" evidence of intent to violate the prohibition against the use of the spear or the seine.[91] The Twenty-seventh General Assembly apparently went a considerable degree further in this connection by providing for the confiscation of fishing devices when "had or maintained" for an illegal purpose, as well as when found in actual use. In practice, however, this change appears to have been of no consequence.[92] The same act permitted the seizure without a warrant by the "fish and game warden, sheriffs, constables, and police officers" of fish illegally taken. Another section of the act forbade the taking of trout, black bass, or wall-eyed pike less than six inches in length.

A further very important provision of the act was the re-prohibition of winter game-fishing. It will be recalled that the Twenty-fifth General Assembly had modified the fish protection law of the Twenty-third General Assembly so as to permit game-fishing (other than for trout and salmon) during the winter season. This act, it will also be remembered, had been strongly disapproved by the Fish Commissioner who had pointed to some of the unfortunate results of this policy. The Twenty-seventh General Assembly reënacted the law concerning this matter as it had

90 *Biennial Report of the State Fish Commission of Iowa*, 1894-1895, p. 10.

91 *Code of 1897*, Sec. 2540.

92 *Laws of Iowa*, 1898, Ch. 64, Sec.1; *Biennial Report of the State Fish and Game Warden of Iowa*, 1909-1910, p. 26.

been passed by the Twenty-third General Assembly, thus protecting "bass, pike, crappies or any other game fish" from November 1st to May 15th of the year following.[93]

No fish protective legislation was enacted by the Twenty-eighth General Assembly, despite the fact that a very comprehensive bill, covering many of the recommendations of the Fish Commissioner not yet acted upon, was passed by the House. One section made more specific and definite the prohibition against having game fish in possession during the closed season. Another section attempted to overcome the legal uncertainty relative to the powers of the Fish and Game Warden by placing his powers of enforcement of the fish and game laws on the same plane as that of sheriffs or constables with respect to law enforcement generally and authorizing the Warden to call upon these "peace officers" whenever he needed their assistance in the enforcement of the fish and game laws. Other provisions of the bill prohibited fishing within four hundred feet of a fishway between March 1st and May 1st, and the having in possession during the closed season in Iowa of fish taken from the waters of other States. The bill also made it the duty of county attorneys to do their part in enforcing its provisions.[94]

The bill passed the House by the encouraging vote of 67 to 20; but in the Senate, although its passage with numerous amendments was recommended by the Fish and Game Committee, the bill never came to a vote, apparently because the report of the committee was not made until the last of March, when the Senate was ready to adjourn.[95]

[93] *Laws of Iowa*, 1898, Ch. 64.

[94] *Journal of the House of Representatives*, 1900, pp. 418-420.

[95] *Journal of the House of Representatives*, 1900, pp. 764, 765; *Journal of the Senate*, 1900, pp. 853, 854.

At the next session of the legislature, however, an act was passed embodying several important provisions. By including catfish in the six inch minimum length limit, this species of the finny tribe was placed in the same category as bass, pike, and other game fish.[96]

A more important provision of this act pertained to the disposition of illegal fishing devices seized by the Warden or other State officers. The Warden, or other officers, was authorized to "abate and destroy" any and all such devices "without warrant or process" and without the assumption of any liability, whatsoever, for damages.[97] In this connection it may not be amiss to note that the Supreme Court of the United States in the case of Lawton *v.* Steele (152 U. S., 133) had upheld a similar law passed by the legislature of the State of New York.

Another important provision of this act was the imposition of a much severer penalty for the use of dynamite or other explosives in the taking of fish. Such action had been strongly recommended in the thirteenth biennial report of the Warden in which he had said: "We know of instances where thousands of choice small fish have been killed in this inhuman manner in order that the perpetrators might secure a few large ones." And in the next report the Warden wrote: "The crime of dynamiting is the most inhuman of those within the warden's province, and also the most difficult to deal with."[98] Fortunately the abominable practice was dealt a severe blow by the act of the Twenty-ninth General Assembly, which imposed a minimum fine of fifty dollars for the use of dynamite or other explosives in the

[96] *Laws of Iowa*, 1902, Ch. 103, Sec. 2.

[97] *Laws of Iowa*, 1902, Ch. 103, Sec. 1.

[98] *Biennial Report of the State Fish and Game Warden of Iowa*, 1898-1899, p. 7, 1900-1901, p. 8.

taking of fish.[99] This action was warmly praised by the Warden.[100]

The same act permitted the suspension by the Warden of the law against seining to such an extent as to permit the removal by this method from the State waters of carp, buffalo, and other "rough fish". This also was in accordance with the recommendation of the Warden who had pointed out that these fish "are destructive to the spawn of other fish, and are difficult to be ensnared, inasmuch as they will not bite at the ordinary hook."[101] Specifically, the act authorized the Warden to grant written permits to "whomsoever he may see fit" in order that they might "take from certain designated portions of the waters of the state, buffalo, carp, quill backs, red-horse, suckers and gar". No fish were to be so removed, however, except in the presence of "the warden or one or more of his regularly constituted deputies, without expense to the state."[102]

The act limited the number of game fish to be taken in any one day by a single individual to forty, although the Warden had recommended a limit of twenty-five.[103]

Finally, in response to a general recommendation by the Warden, the act prohibited the taking of fish within three hundred feet of a fishway.[104] This was more drastic, even, than the law of Minnesota on the subject, cited by the

[99] *Laws of Iowa*, 1902, Ch. 103, Sec. 5.

[100] *Biennial Report of the State Fish and Game Warden of Iowa*, 1902-1903, p. 5.

[101] *Biennial Report of the State Fish and Game Warden of Iowa*, 1900-1901, p. 8.

[102] *Laws of Iowa*, 1902, Ch. 103, Sec. 6.

[103] *Biennial Report of the State Fish and Game Warden of Iowa*, 1900-1901, p. 9.

[104] *Biennial Report of the State Fish and Game Warden of Iowa*, 1898-1899, p. 8; *Laws of Iowa*, 1902, Ch. 103, Sec. 4.

Warden in his report, for the Minnesota law prohibited the taking of fish within only one hundred feet of a fishway.

Another law of the Twenty-ninth General Assembly provided for the construction of a fishway in the Bonaparte Dam. Before discussing this, however, it may be well to note the status of fishway legislation in general at this period.

It will be called to mind that despite the repeal of the vigorous fishway enforcement act enacted by the Eighteenth General Assembly, the general law requiring the placing of fishways in dams, enacted by the Seventeenth General Assembly, was still in force. The constitutionality of this law had been upheld in the Supreme Court of Iowa in 1899 in the case of State *v.* Beardsley,[105] reversing the decision of the district court which had decided against the State. This case, emphasizing as it does the public interest in fish protection, and some of the difficulties, is worthy of some little attention.

The defendant was the owner of a dam in Skunk River which had been built some years before the passage of the act in 1878 requiring the construction of fishways. Due to the fact that the defendant had neglected, "and still neglects and refuses", to construct a fishway in the dam, the suit was brought to adjudge the dam a nuisance to be abated in accordance with the law.

The defendant alleged, in the first place, that to require him to construct a fishway was depriving him of property without due process of law. But, declared Justice Charles T. Granger:

> It is a well-settled law that one riparian owner has not the right to so use the stream as to unreasonably deprive other riparian owners of rights common to all . . . . Fish and Game are so

[105] 108 Iowa 396.

related to the public welfare that they have, time out of mind, been the subjects of legal control, and their preservation has been very generally a matter of legislative concern.

He went on to prove that this doctrine had been upheld in the Supreme Court of the United States and in State courts. The Supreme Court of the United States in Holyoke Company *v.* Lyman[106] said:

> Fisheries . . . . are also so far public rights that the legislature of the state may ordain and establish regulations to prevent obstructions to the passage of the fish, and to promote the usual and uninterrupted enjoyment of the right by the riparian owners.

The decision in this case had a wholesome effect, for many owners of dams thereupon constructed fishways.[107] But at the time of the assembling of the Twenty-ninth General Assembly one very important dam still lacked a fishway. This was the Bonaparte Dam located at a strategic point in the Des Moines River, near its junction with the Mississippi. Being without a fishway, this dam effectually blocked the passage of fish which entered the Des Moines River from the Mississippi. For several terms prior to the decision of the Iowa Supreme Court in State *v.* Beardsley, a bill had been introduced in the legislature authorizing the destruction of the dam and providing compensation therefor, but the bill failed to become law.[108] The decision of the Supreme Court in State *v.* Beardsley, however, encouraged the Warden to begin suit against the owners of the Bonaparte Dam to compel the construction of a fishway in the dam. The suit, however, was lost in the district court, and

[106] 15 Wallace (82 U. S. Reports), 500 at 506.

[107] *Biennial Report of the State Fish and Game Warden of Iowa,* 1898-1899, p. 15.

[108] *Biennial Report of the State Fish and Game Warden of Iowa,* 1898-1899, p. 15.

also, on appeal, in the Supreme Court. Because of this the Warden was led to say:

> So large a part of the State is affected, and the available supply of fish so greatly depleted by the obstruction of the river, that the matter is of very great public concern. I therefore recommend legislation authorizing the purchase or condemnation of the dam, as the only means of restoring to the people of the state the benefits otherwise denied to them.[109]

The Twenty-ninth General Assembly was not deaf to this appeal in behalf of the interests of the people of Iowa. A law was passed authorizing the Attorney General to begin condemnation proceedings against the owners of the dam and providing for the subsequent construction of a fishway.[110] In accordance with this act suit was brought, but the jury awarded the owners damages so high — $40,000 — that the State appealed. While the case was pending, however, Mother Nature herself remedied the long obnoxious situation, for the unusually severe rains of 1903 washed away a large part of the dam, more than sufficient, indeed, to permit the easy passage of fish. And the Warden was informed "by good authority" that should the owners attempt to rebuild, the inclusion of a fishway could be compelled by the State.[111]

Though making no outstanding contributions to the cause of fish protection, the Thirtieth General Assembly made a few alterations in the protective laws which may be briefly noted. It increased the open season for game fish by fifteen days, but it reduced by fifteen days the period during

109 *Biennial Report of the State Fish and Game Warden of Iowa,* 1900-1901, p. 22.

110 *Laws of Iowa,* 1902, Ch. 201.

111 *Biennial Report of the State Fish and Game Warden of Iowa,* 1902-1903, pp. 11, 12.

which the use of a trot-line was permissible. It definitely extended the protection of the law to all bass, whether of the "black" variety or not. And it further provided that no permit should authorize its holder to seine lakes having an area of less than two square miles or between December 1st and June 15th.[112]

Not until the Thirty-third General Assembly was additional fish protection legislation enacted. An act of this Assembly, though concerned primarily with game, did contain some provisions relative to fish. The closed season on trout and salmon, which by the Twenty-sixth General Assembly in extra session had been limited to the period between the first days of November and March,[113] was now extended to include the month of October. The maximum number of game fish which might be taken by any individual in one day remained fixed at forty, but a limit of twenty bass, pike, or pickerel was prescribed. The crappie was included with the bass, pike, and other game fish, none of which under six inches in length could legally be taken. The intra-state shipment of game fish for purposes of sale was prohibited. The law passed by the Twenty-ninth General Assembly declaring illegal the taking of fish within three hundred feet of a fishway was amended by the Thirty-third General Assembly so as to permit such taking by hook and line.[114]

Through a technicality, however — neglect of the Speaker of the House to sign the enrolled bill — the measure did not become a law until it was reënacted by the Thirty-sixth General Assembly.[115]

[112] *Laws of Iowa*, 1904, Chs. 92, 93, 94.

[113] *Code of 1897*, Sec. 2540.

[114] *Laws of Iowa*, 1909, Ch. 153.

[115] *Laws of Iowa*, 1915, Ch. 290.

The fundamental principle of State ownership of fish in public waters was well set forth in an act passed by the Thirty-fourth General Assembly. "The ownership and title", it declared, "of all . . . . fish in any of the public waters of the state . . . . is hereby declared to be in the state, and no . . . . fish shall be taken . . . . except the person . . . . shall consent that the title to said . . . . fish shall be and remain in the state of Iowa for the purpose of regulating and controlling the use and disposition of the same after . . . . taking".[116]

Of only minor consequence were the changes made in the fish protection laws by the Thirty-fifth General Assembly. The open season for game fishing other than for trout and salmon was extended fifteen days. The spearing of "rough fish" was permitted in the day-time except during March and April. The law prohibiting fishing by means other than hook and line within three hundred feet of a fishway was amended to apply to dams as well. Inasmuch, however, as the law required all dams to have fishways, this last provision was technically unnecessary.[117]

In two important particulars the fish protective legislation was strengthened by the Thirty-sixth General Assembly. The first of these had to do with the type of fishways which might be constructed in dams. The existing law left this matter to the discretion of the dam owners provided that the fishways were "of suitable capacity and facilities to afford a free passage for fish up and down" the stream or river which the dam obstructed.[118] But the Thirty-sixth General Assembly stipulated that the fishway in each case must be constructed in accordance with the plans and speci-

[116] *Laws of Iowa*, 1911, Ch. 118.

[117] *Laws of Iowa*, 1913, Chs. 204, 205.

[118] *Code of 1897*, Sec. 2548.

fications furnished by the Warden for that particular dam.[119]

The second important action of the Thirty-sixth General Assembly relative to fish protection concerned the seizure of seines and other illegal fishing devices. Despite the legislation of the Twenty-seventh General Assembly in this respect, the Warden or his subordinates were still powerless to seize illegal fishing devices unless found in actual use or within ten rods of the shores of the public waters of the State. The weakness of the law in this respect was emphasized in three consecutive biennial reports.[120] To quote from the twentieth report:

> Seines, traps and other devices are used in the darkness of the night. Large numbers of fish are taken and the small fry destroyed. We are ignorant of this work and only by chance does one of our men find it out. So long as the law remains as it is, not permitting us to seize a seine or prosecute a man for having it in his possession except when in actual use or if found within ten rods of the public waters, it will be impossible to stop this work. If it was unlawful to possess a fish seine the work would be light and unlawful fishing of this kind could be prevented. I can see no reason for the possession of a seine only for the purpose of unlawfully taking fish.

The Thirty-sixth General Assembly heeded this recommendation by repealing the ten rods' limitation and providing that unlawful fishing devices might be seized "wherever found". The same act raised the minimum length of game fish other than pickerel and trout which might be lawfully taken from six inches to eight, established a minimum limit of ten inches for trout, and forbade the taking of pickerel less than twelve inches in length.[121]

[119] *Laws of Iowa*, 1915, Ch. 276, Sec. 1.

[120] *Biennial Report of the State Fish and Game Warden of Iowa*, 1909-1910, p. 26, 1911-1912, p. 11, 1913-1914, p. 8.

[121] *Laws of Iowa*, 1915, Ch. 276, Sec. 2.

With one important exception the only positive contribution of the Thirty-seventh General Assembly to the cause of fish protection was an act requiring pumping stations to equip their plants with screens so as to prevent the passage of fish into the station.[122] A bill which would have permitted the taking by rod, hook, and line, the only legal method of game fishing, except that by trot-line, of an unlimited number of fish per day by a single individual, though passed in the House, was defeated by a narrow majority in the Senate.[123]

The exception referred to above was the passage of a fishing license law for non-residents. Strictly speaking, the purpose of enacting the law was apparently not so much to limit the taking of Iowa's fish as to afford additional revenue. Every non-resident male over sixteen years of age was forbidden to fish in any of the public waters of the State without first obtaining from the county auditor a license, renewable annually, the fee being two dollars. This fee was raised to three dollars by the extra session of the Fortieth General Assembly. A penalty was provided for non-compliance with the law.[124]

An act of the Thirty-eighth General Assembly, the object of which was to regulate the mussel industry, may properly be reviewed in this chapter. No mussel less than one and three-quarters inches in its greatest dimension could lawfully be taken for commercial purposes. The Fish and Game Warden was authorized to close certain areas to mussel fishing, though not for more than five years at a

[122] *Laws of Iowa*, 1917, Ch. 81.

[123] *Journal of the House of Representatives*, 1917, p. 1657; *Journal of the Senate*, 1917, p. 1788.

[124] *Code of 1924*, Sec. 1725; *Laws of Iowa*, 1917, Ch. 168. A license system for non-resident hunters had been put in operation many years before.

time, or more than one-half of the total mussel area. The act also comprised detailed restrictions concerning the equipment to be used in the gathering of the mussels. No commercial fisherman might take mussels without securing a special license from the Warden. The cost of this for a resident was two dollars, and for a non-resident twenty-five dollars. All licenses were subject to annual renewal. The law exempted the commercial mussel fisherman of Wisconsin and Illinois from the non-resident license requirement provided these States took reciprocal action with respect to Iowa's mussel fishermen.[125]

The Thirty-ninth General Assembly enacted a special act relative to the black bass. The law apparently added substantially nothing to the measure of protection afforded this fish by the protective laws in general, but it did serve to reiterate that a certain species of game fish — the importance of which was being increasingly recognized — should by all means be protected from the unscrupulous or merely indifferent fisherman. At the same session of the legislature an act was passed prohibiting fishing by trolling from a motor-boat on any of the lakes of the State.[126]

Aside from a law declaring the ownership of the "mussels, clams and frogs" to be vested in the State, the only act of the Fortieth General Assembly relative to fish protection was one making more stringent the regulations under which "rough fish" were to be taken. In no case was a permit to take these fish to be granted for a period longer than one year or to sanction their taking between March 1st and June 15th — the spawning period. Prior to the granting of a permit, a bond to the value of five hundred dollars was to be deposited with the Warden by the individual

[125] *Laws of Iowa*, 1919, Ch. 98.

[126] *Laws of Iowa*, 1921, Chs. 212, 256.

making application for the permit. Violation of the conditions under which the permit was granted would result in cancellation of it.[127]

At its extra session for the purpose of law codification and revision the Fortieth General Assembly made a number of changes in the fish protective laws which will be noted. One of these provided for a male resident fishing license applicable only to the "stocked meandered lakes" of the State. For fishing in the streams and unstocked public lakes, no license was necessary for a resident. Technically, however, a lake may be considered stocked after one consignment of fish has been placed in it by the Warden or under his direction. The license provision did not apply to residents under eighteen years of age. The same license authorized the holder to hunt as well as to fish. The license, the fee for which was one dollar, was to expire annually but was, of course, renewable. No license was required for fishing in waters within the confines of one's property. If found upon the person of any one other than the person to whom originally issued, the license was subject to revocation.[128]

By an apparent inadvertence of the codifiers, the status of the non-resident with respect to fishing was rendered somewhat uncertain. In the section prohibiting fishing without a license no distinction was made between the resident and the non-resident, the term "male person" being used and the license requirement applying only to fishing in "the stocked meandered lakes of the state". Nevertheless, in the section dealing with fees the resident and the non-resident were treated separately, there being prescribed the payment of one dollar for the fishing of residents in the

[127] *Laws of Iowa*, 1923, Chs. 28, 32.

[128] *Code of 1924*, Secs. 1719, 1720, 1722, 1725, 1729.

"stocked meandered lakes" only, but a fee of three dollars for the fishing of non-residents or resident aliens in "any state waters".[129] But, as will be noted below, this inconsistency was corrected by an act of the Forty-first General Assembly.

Another provision established the zone system with respect to fishing. Iowa being a large State, its temperature and climate in the northern part is sufficiently different from that of the southern part to make some difference in the spawning periods of the fish and the time of year when it is expedient to take them from the waters by hook and line. By dividing the State into zones — a northern and a southern — different regulations were possible with respect to fishing in each zone. The act prescribed separately the closed season on the different varieties of fish in the northern zone and in the southern. The closed season on black bass was declared to be from December 1st to June 14th in the northern zone, but from November 15th to May 31st in the southern. The closed season on all other game fish except trout or salmon was to be from December 1st to May 14th in the northern zone, but from November 15th to April 30th in the southern. The closed season on trout or salmon for both zones was declared to be from September 1st to April 14th.[130]

The act also reduced the limit of the day's catch for any one individual from forty to twenty-five, of which not more than ten were to be pike or bass.[131]

Minor changes were made with respect to the minimum lengths of fish which might be taken by hook and line. Protection in this respect was, for the first time, accorded

[129] *Code of 1924*, Secs. 1719, 1725.

[130] *Code of 1924*, Secs. 1730, 1731.

[131] *Code of 1924*, Sec. 1732.

the yellow perch and the sunfish, the limits of which were fixed by the new legislation at seven and six inches respectively.[132]

Another section of the act declared unlawful the removal or destruction of a dam by its owner or the alteration of it in such a way as to lower the water level, "without giving written notice to the state game warden ten days prior to such removal or change".[133]

Another provision required the licensing of wholesale fish markets, the license fee in each case to be ten dollars annually. Each holder of a license was required to submit to the Fish and Game Warden an annual report "of all fish caught or taken from waters under the jurisdiction of this state, which were handled by such licenses."[134]

Although the act continued in effect the general prohibition against the sale or transportation for sale of game fish, it was provided that "one day's catch lawfully taken may be sold, in the immediate vicinity where taken, to an individual for his family consumption, by the party taking such fish." Not more than forty fish, and these not for purposes of sale, might be shipped by any person in one day "except as otherwise provided under license to fish with seine or net or under permit from the state game warden." Shipments of fish taken with licensed nets or seines were to have attached thereto "a tag stating the name and address of the consignor and consignee, the amount of each kind contained therein, the waters from which taken, and that same were taken with licensed nets or seines." The act further provided that the presence among a shipment of fish of a single specimen taken or transported contrary to

[132] *Code of 1924*, Sec. 1733.

[133] *Code of 1924*, Sec. 1742.

[134] *Code of 1924*, Secs. 1752, 1753.

law was sufficient to subject the entire shipment to seizure by the Warden or his deputies.[135]

With respect to fish, so far as the interior waters of the State are concerned, the legislation enacted by the Forty-first General Assembly was of minor consequence. Sheepshead were added to those fish which might be taken by net or seine from the waters of the State by those holding permits. And the minimum length of the prolific sunfish which might legally be taken, by ordinary methods of fishing, was reduced from six inches to four. The inconsistency in the sections of the code dealing with fishing licenses was corrected, all non-residents being specifically forbidden to fish without a license in "any state waters". Thus the restriction with respect to the fishing of non-residents was more drastic than the original law upon this subject enacted by the Thirty-seventh General Assembly, for that had involved only males over sixteen years of age. But the act of the Forty-first General Assembly applied to non-resident women and children as well as to men. It should be pointed out, however, that no license to fish is required by a resident female or by a resident male under eighteen years of age.[136]

THE BOUNDARY RIVERS

The boundary rivers of Iowa include those parts of the Mississippi, Missouri, and Big Sioux rivers which are in the jurisdiction of Iowa, and a small section of the Des Moines River. The jurisdiction of a State over its boundary rivers, unlike that over its interior waters, is limited to the middle of the main channels of the rivers. Certain powers of the Federal Government, moreover, may be exercised in such a way as to curtail even this measure of juris-

[135] *Code of 1924*, Secs. 1780, 1783, 1786, 1787.

[136] *Laws of Iowa*, 1925, Chs. 34, 35.

diction. The important point for us to bear in mind, however, is that if fish protective laws with respect to boundary rivers are to be effective, there should be concurrent legislation upon the part of the States on either side of the river. For what does it profit one of these States to enact stringent laws with respect to fishing on its side of such a river, if the State on the opposite shore is very lax in this respect? The former State would feel that its curtailment of the fishing privileges of its own citizens was simply reacting to the benefit of the citizens of the other State. The difficulty would be in large measure avoided, of course, if the fish would remain within the jurisdictions of their respective States, but there is no evidence that fish have ever regarded their personal activities as subject to common law restrictions.

Concurrent legislation, however, is not easy to bring about. The people of two States — or the legislatures of those States — facing the same problem may not want to solve it in the same way. The legislation of a State, for one thing, will usually keep step with the progress of education in that State, and the standards in this respect of two States are not likely to be identical. Moreover there are other factors which can not be considered here that may render concurrent legislation difficult. It will suffice to observe in introducing the phase of the problem to be discussed in this connection that the legislature of Iowa in general has followed until recently the policy of exempting the boundary rivers from the effects of acts passed with respect to the fish in the waters of the State.

The earliest fish protection laws of Iowa, to be sure, did not exempt the boundary rivers. But the first truly comprehensive fish protection law — that of the Sixteenth General Assembly — contained the following provision: "*Pro-*

vided, that nothing herein contained shall be held to apply to fishing in the Mississippi and Missouri rivers."[137]

The following year the Fish Commissioner, while not specifically advocating that the full measure of the law be extended to the fish in the Mississippi and Missouri rivers, did recommend that some protection be afforded them. He stated that he knew of instances where from thirty to eighty thousand pounds of fish had been taken from the Mississippi at one haul of the seine. For legislation protecting fish in the boundary rivers of the State to be truly effective, however, the States bordering on the Mississippi and Missouri should enact identical laws on the subject.[138]

No action, however, was taken by the legislature at this time. The Eighteenth General Assembly, on the contrary, placed that part of the Des Moines River which served as the boundary between Iowa and Missouri in the same category as the Mississippi and Missouri so far as fish legislation was concerned.[139]

Four years later an attempt was made to extend protection to the fish in the boundary rivers through the introduction in the House of a bill whose object was to repeal the clause of the fish protection act of the Sixteenth General Assembly which had declared the law non-applicable to the Mississippi and Missouri rivers. The bill failed to receive a constitutional majority in the House, though a substitute for it did pass the lower house but failed to come to a vote in the Senate.[140]

[137] *Laws of Iowa,* 1876, Ch. 70, Sec. 10.

[138] *Biennial Report of the State Fish Commission of Iowa,* 1875–1877, pp. 10, 11.

[139] *Laws of Iowa,* 1880, Ch. 92.

[140] *Journal of the House of Representatives,* 1884, pp. 152, 218, 456, 457, 481; *Journal of the Senate,* 1884, p. 581.

And when the Twenty-third General Assembly enacted its long fish protection and propagation act — discussed in detail in part one of this chapter and in Chapter IV — it added the Big Sioux River to the other three rivers to which the fishing laws were held not to apply.[141]

In his tenth biennial report the Fish Commissioner recommended that his jurisdiction over boundary rivers should extend "as far as the State's jurisdiction extends in criminal cases".[142]

There was, however, some question as to just what the term "boundary rivers" included. Did the term "Mississippi", for instance, include the sloughs, bayous, and lakes wholly within the State of Iowa, but remotely connected with the Mississippi, or simply to the main channel of that river? This question was finally settled by the Iowa Supreme Court in the case of State *v.* Haug.[143] This decision was so important that a measurably complete report of the case is in order here. G. H. Haug was arrested by the Commissioner for seining fish in Big Lake, a body of water three miles north of Lansing, connected by an outlet with the Mississippi River but wholly within the State of Iowa. Haug did not deny the seining but maintained that Big Lake was a part of the Mississippi, and that the provisions of the law prohibiting seining in the public waters of Iowa did not apply to this lake. A lower court decided against Haug, but on appeal to the District Court of Allamakee County, the lower court's ruling was reversed, Big Lake being declared a part of the Mississippi and thus exempt from the fish protection provisions of the laws pertaining to the waters of the State in general.

141 *Laws of Iowa*, 1890, Ch. 34, Sec. 11.

142 *Biennial Report of the State Fish Commission of Iowa*, 1892-1893, p. 16.

143 95 Iowa 413.

"As soon as the verdict was learned", wrote the Commissioner, "the lakes, bayous and sloughs on the Iowa side of the Mississippi swarmed with market fishermen, who, taking advantage of the situation, did not confine their work of destruction to the limits of these waters, but were known to go more than a mile up the rivers and creeks that empty into the Mississippi. . . . Under Judge Hoyt's decision I could do nothing to prevent the outrage."[144]

In view of this condition it may be well imagined that the decision of the Supreme Court of Iowa, to which the State had appealed, was awaited with trepidation by the Commissioner and all those anxious for the protection of fish in Iowa waters. The opinion of the court, rendered on October 3, 1895, reversed the judgment of the district court and upheld the State's contention that Big Lake was not, within the meaning of the fish laws, a part of the Mississippi.

The facts in the case, the court held, showed that Big Lake had well defined banks, no current, and had not been used for purposes of navigation. These facts of themselves argued that the lake was practically, if not technically, independent of the river; but the court definitely ruled that Big Lake was wholly in the State of Iowa, being from one-quarter to one-half mile removed from the main channel of the Mississippi. It did not, then, serve as a part of the boundary between Iowa and Wisconsin. The intent of the legislature in enacting fish protection laws, the court held, was to protect the fish in waters which were wholly within the limits of the State. The boundary rivers, it is true, had been excepted, but since Big Lake was in no sense a part of the State boundary and was entirely under Iowa's jurisdiction, it was to be governed by the general laws covering fish protection in the waters of Iowa.

[144] *Biennial Report of the State Fish Commission of Iowa*, 1894-1895, p. 9.

But still there were no laws protecting the fish in the channels of the boundary rivers. In the Twenty-fifth General Assembly a bill had been introduced in the Senate, which, by repealing the exemption clause — Ch. 34, Sec. 11 — of the general fish protection law of the Twenty-third General Assembly would have automatically extended the protection afforded by the other provisions of that chapter to all of the four boundary rivers. Although reported favorably by the Senate Fish and Game Committee, the bill apparently never came to a vote.[145]

Nor was legislative action taken when in 1899 the Commissioner recommended that the sphere of the fish protective laws be extended to the middle of the main channels of the boundary rivers, although he pointed out that since the seining of fish had been prohibited by Wisconsin and Illinois the fishermen of these States were coming over to the Iowa side to ply a trade in a manner illegal in their own States. The Warden reported that "800 wall-eyed pike weighing from two to five pounds . . . . besides a large number of fish of other varieties", had been taken with one haul of the seine near Sabula, Iowa, by fishermen from Savannah, Illinois.[146]

But it was not until 1902 that the legislature took any action whatever with respect to the problem of protection of the fish in the channels of the boundary rivers. And the only action taken in that year was the removal from the exemption class of the Big Sioux River, to which hereafter were to apply the provisions of the fish laws in general. This law was passed unanimously in both houses.[147]

145 *Journal of the Senate*, 1894, pp. 505, 606.

146 *Biennial Report of the State Fish and Game Warden of Iowa*, 1898-1899, pp. 8, 9.

147 *Laws of Iowa*, 1902, Ch. 104, Sec. 1; *Journal of the House of Representatives*, 1902, p. 344; *Journal of the Senate*, 1902, p. 604.

The Thirty-second General Assembly, however, attacked the problem in earnest. A bill was passed by a unanimous vote in both houses forbidding seining without an annual license and also prohibiting the actual taking by hook and line of certain designated game fish in those parts of the four boundary rivers within Iowa's jurisdiction.[148] The bill, however, was vetoed by Governor Albert B. Cummins. "I have grave doubt", read his veto message, "whether the State of Iowa can fix the terms upon which fish may be taken from the flowing waters in our boundary rivers; but I would not withhold my approval for this reason alone."

What the Governor considered a more serious defect in the bill was that the size limits of the various fish which might be taken in the boundary rivers, as fixed by the act, were more strict than those which prevailed with respect to fish of corresponding species in the interior waters of the State. "If the bill under consideration were to become a law", the veto message continued, "the sportsman could take with hook and line from the interior waters bass, catfish, pike or trout of six inches or more in length, but could not take them from the . . . . boundary streams unless they were of the size prescribed in Section Four. There is no reason for such discrimination. The evidence laid before me shows that the angler rarely catches the kinds of fish mentioned in the bill with his hook and line, as large as there provided, and the practical effect of the law would be to prohibit hook and line fishing in these boundary streams."

The message further pointed out that under the provisions of the act in question and of those acts regulating the buying or selling of game fish, a person purchasing a game

[148] *Journal of the House of Representatives*, 1907, pp. 957, 958; *Journal of the Senate*, 1907, pp. 1051, 1052.

fish of a length between the limit prevailing with respect to the interior waters and that established by the act in question in case of the boundary rivers, might or might not be a criminal, depending upon whether the fish had been taken from the interior waters or from the boundary rivers.[149]

Later in the session a bill was introduced in the House containing a provision relative to seining like that in the bill vetoed, but placing no restriction upon the size of fish which might be taken by hook and line from the boundary rivers. It passed the House by a unanimous vote, but reached the Senate only one day before that body's adjournment and was left in the Sifting Committee.[150]

At last, in 1909, a law was enacted protecting the fish of the boundary rivers from the ravages of the net and the seine. This law required that a license, renewable annually, must be held by anyone seining any portion of the boundary rivers (including the Big Sioux) within Iowa's jurisdiction. The license fee was fixed at ten dollars for each five hundred feet of seine, and there were additional charges based on the weight of the lead carried by the net and on the supplementary nets used. Prior to the granting of a license a non-resident was required to deliver a bond to the Fish and Game Warden. Tags were to be provided for attaching to the licensed nets. No seine or net of a mesh less than two and one-half inches was to be licensed under the act. No catfish less than ten inches long might be taken by seine or net from the waters of the boundary rivers; or any bass, pike, pickerel, or crappie less than fifteen inches in length, nor were any pike, bass, or crappies to be taken by net or seine from the boundary waters between March

149 *Journal of the House of Representatives*, 1907, pp. 1383, 1384.

150 *Journal of the House of Representatives*, 1907, pp. 1455, 1519; *Journal of the Senate*, 1907, pp. 1437, 1438.

31st and June 1st — the spawning period. The act directed that fish of a species or size not permitted by the act that were taken in nets were to be returned immediately, without injury, to the waters. The funds derived from the sale of licenses were to be expended by the Warden in administering his department, and particularly for fish rescue work, as will be noted in the chapter on fish propagation.[151]

The protection of the fish in the boundary waters of the State was carried a step further in 1911, when the Thirty-fourth General Assembly enacted a law which removed from the boundary class, so far as fish protective provisions were concerned, the Big Sioux River and the boundary portion of the Des Moines River. Thus the taking of fish from the boundary parts of these rivers within Iowa's jurisdiction was now prohibited except by hook and line. The same act, however, reduced the size limits on the various game fish which might be taken by net or seine, with the exception that the size limit on pickerel was raised from twelve inches to fifteen inches, with limits of one and three pounds on sand and rock sturgeons, respectively.[152]

In the administration of the license laws with respect to seining in the Mississippi and Missouri rivers, however, one serious difficulty was encountered. The Illinois law requiring licenses for seining in the Mississippi had been declared unconstitutional and the Iowa fishermen conceived the idea of confining their seining to points just east of the center of the main channel (or thalweg) of the river, thus apparently evading the requirement that they take out licenses as provided by the Iowa law. One such fisherman, however — Enos Moyers, by name — was arrested charged with violation of the law. The District Court of Des Moines

[151] *Laws of Iowa*, 1909, Ch. 155.

[152] *Laws of Iowa*, 1911, Ch. 117.

County, in which the case was tried, discharged the defendant on the grounds that Iowa had no jurisdiction whatever over fishing beyond the middle of the main channel.

The State appealed to the Supreme Court of Iowa, and the latter, on June 25, 1912, handed down a decision reversing the judgment of the district court. The court held that the concurrent jurisdiction over the Mississippi granted by Congress to Iowa and Illinois empowered Iowa to prosecute violations of its fishing laws even though such violations occurred on the Illinois side of the river. The court based its decision substantially on that in State *v.* Mullen (35 Iowa 199) which was to the effect that the State's jurisdiction with respect to the abatement of a nuisance extended from bank to bank on the Mississippi. So far as Iowa's criminal jurisdiction over the Mississippi is concerned, said the court, "it seems to be conceded on all hands" that this extends to "any portion of the river so far as it constitutes the common boundary" between Iowa and another State. "We see no distinction which can be drawn between statutes regulating . . . . the maintenance of nuisances and those relating to fishing."[153]

The effect of this decision was expressed by the Warden in the following words:

> Fishermen who were fighting the law claiming it to be unconstitutional and refused to take out the legal license, are now applying for them and are banding together for the protection of fish in these boundary waters. With such organization and the strict enforcement of the law the fish in this great source of supply will increase instead of decrease as has been the case during the last few years.[154]

[153] 155 Iowa 678; *Biennial Report of the State Fish and Game Warden of Iowa*, 1909-1910, p. 10.

[154] *Biennial Report of the State Fish and Game Warden of Iowa*, 1911-1912, p. 14.

No legislative change occurred with regard to the status of fishing in the boundary rivers until 1924 when the Fortieth General Assembly, in extra session for the purpose of law revision and codification, made a number of changes in the boundary river laws. The annual license fee for each five hundred lineal feet of seine was raised from ten to fifteen dollars, and the charges for lead, supplementary nets, and so forth, were likewise increased. Annual reports were required from holders of seining licenses, "stating in detail the amount and kind of fish caught, the amount for which same were sold and the total value of each kind." Failure to submit such a report might render the licenses non-renewable. Two fish — the yellow perch and the sunfish were added to those upon which a size limit was placed when taken by net or seine.[155] Sunfish must be six inches long and yellow perch seven inches.

More notable than any of these changes, however, was the placing of the two great boundary rivers — the Mississippi and the Missouri — in the same class as the interior waters of Iowa, so far as hook and line and general fishing regulations were concerned. Fishing with licensed seines was still to be permitted in these rivers, but no bass, pike, or crappies might be taken at any season of the year by this method. Thus, three of the leading game fish were now equally protected in all of the waters — interior and boundary — of the State. With the exception of seining, the only difference between the fishing regulations relative to the Mississippi and the Missouri and those pertaining to the interior waters of the State is that the laws relative to the former permit trolling from power boats while the latter do not.[156]

[155] *Code of 1924*, Secs. 1748, 1749, 1751.

[156] *Code of 1924*, Secs. 1737, 1751.

IV

GAME PROTECTIVE LEGISLATION

The term "game", as used in this article, may be considered as including those wild birds and animals, of value as food or otherwise, which are sought by the sportsman or trapper.

Although a bill looking towards the protection of game had been introduced into the House in the course of the Fifth General Assembly and had been approved by the Committee on Agriculture, to which it had been referred,[157] the first game protection law was enacted by the following General Assembly. A bill to this effect was introduced in the Senate and was referred to a special committee from which it was later reported and its passage recommended. It encountered some opposition. A motion was made to postpone the bill indefinitely, but this was lost. An amendment was then proposed permitting the killing of game by any person for his own use. This would have defeated the essential purpose of the bill, but it was voted down. The bill finally passed the Senate by a vote of 23 to 12, and the House, in a slightly amended form, by a vote of 40 to 17. Attempts in both the House and the Senate to amend the bill so that it would not protect prairie chickens were not successful.[158]

The law declared illegal the killing, ensnaring, or trapping, except upon one's own premises, of wild deer, elk, turkey, prairie chickens, grouse, or quail between February 1st and July 15th of each year. To buy or sell any of these animals or birds which had been obtained in violation of the act

157 *Journal of the House of Representatives*, 1854-1855, pp. 226, 255.

158 *Journal of the Senate*, 1856-1857, pp. 104, 333, 334, 385, 386; *Journal of the House of Representatives*, 1856-1857, p. 480.

was also declared illegal. To have such animals in possession between these dates was to be regarded as "prima facie" evidence of violation of the law. There was also a provision concerning trespass similar to that of the early fish protective laws. The penalty was fixed at fifteen dollars for each deer or elk, and at three dollars for each bird illegally taken.[159]

At the next session of the legislature the closed season established by this first protective act was extended to include the month of January, the remainder of July, and half the month of August of each year.[160]

Although no new game protective legislation was enacted by the Eighth General Assembly, such legislation as had already been placed upon the statute books was allowed to stand, despite the introduction of a bill to repeal the game law of the Seventh General Assembly and despite efforts to remove the protection accorded prairie chickens.[161]

The Ninth General Assembly passed a law rendering existing game protective legislation somewhat more stringent. A bill to this effect passed both the Senate and the House, though in the latter body attempts were made to kill it and to render it inapplicable to counties of less than twenty thousand inhabitants. The law extended the closed season to September 1st on the birds and animals originally protected by the legislation of the Sixth General Assembly, with the exception of prairie chickens, the closed season on which was limited to the six months between February 1st and August 1st. A six months closed season on woodcock was also declared. The penalty for taking game birds

[159] *Laws of Iowa*, 1856-1857, Ch. 164.

[160] *Laws of Iowa*, 1858, Ch. 147.

[161] *Journal of the Senate*, 1860, pp. 263, 525; *Journal of the House of Representatives*, 1860, p. 88.

illegally was raised from three to five dollars for each bird.[162]

No additional protective legislation for game was enacted by the Tenth General Assembly, and, indeed, there was apparently very little activity in this regard upon the part of any of the legislators. In the course of the following Assembly, however, a bill was passed by the Senate aiming to make more stringent the regulations governing the taking of prairie chickens. But in the House the chairman of the Committee on Agriculture to which the bill had been referred reported that "inasmuch as prairie chickens are in the western and a considerable portion of the central parts of the State so injurious to the settlers that they are unable to raise the necessary vegetables, &c., for the use of their families, and being of the opinion that it is more the duty of the Legislature to protect men, women and children than prairie chickens", the committee recommends that the bill be indefinitely postponed.[163]

Had there been at this early date some State official specifically responsible for the enforcement of the game laws, the legislature might have avoided the difficulty pointed out by the committee chairman. It could have vested in that enforcement officer power to extend or withhold, protection to the prairie chicken, dependent upon local conditions. This policy of granting discretionary power will be considered more fully in a later connection.

During the course of the proceedings of the Twelfth General Assembly both houses were the recipients of several petitions relative to game protective legislation. Some of these sought more stringent game protection laws in gen-

162 *Laws of Iowa*, 1862, Ch. 115; *Journal of the House of Representatives*, 1862, p. 661.

163 *Journal of the Senate*, 1866, p. 413; *Journal of the House of Representatives*, 1866, pp. 501, 502.

eral; others were concerned with additional protection for the wild turkey or the prairie chicken. The Committee on Agriculture in the Senate, to which the petitions received by that body were referred, reported that in their opinion "no change is advisable at this time." But the Senators apparently considered that the will of their constituents was expressed more accurately through the petitions than through the report of their Committee on Agriculture, for notwithstanding the attitude of the committee, a game protection bill was passed by the Senate. Although this bill, not being passed by the House, failed to become a law, the Senate later passed a game protective bill which had originated in the House and had been passed by that body.[164] The law changed slightly the closed season on quail and ruffed grouse, and it restored protection during the month of January to the prairie chicken, but curtailed to the extent of one month the closed season on deer, elk, and wild turkeys.

The above regulations applied to the taking of game by shooting only. The trapping of any of this game was forbidden by the law except in the month of December. Moreover there was to be no trapping of quail prior to December 1, 1872. As in the case of previous acts, however, these regulations did not apply to trapping or shooting on one's own premises, though game shot or killed under such conditions must be for the owner's exclusive use. The provision relative to the buying, selling, or having in possession of game illegally taken was similar to that of the game protective law passed by the Sixth General Assembly. Railroads or other common carriers transporting game birds or animals protected by the act within their respective

[164] *Journal of the Senate*, 1868, pp. 102, 136, 243, 246, 258, 271, 401, 500, 501; *Journal of the House of Representatives*, 1868, pp. 65, 92, 210, 252, 273, 408, 409, 410, 510, 511.

closed seasons were to be subject to a fine of from one hundred to three hundred dollars in lieu of, or in addition to, a jail sentence of thirty days for the owners or agents of the common carrier responsible. The fines set by the previous act were allowed to stand, but the fine paid by trespassers was to go in its entirety to the county school fund, none of it serving as a compensation to the owner of the property on which there had been trespass, as was the case in the act enacted by the Sixth General Assembly in 1868.[165]

Up to this time no law had been placed on the statute books of Iowa protecting the birds of the State from destruction. One of the accomplishments of the Thirteenth General Assembly was the passage of such an act. The preamble of the law merits quoting in full, for it might be allotted almost the status of a creed. It is as follows:

> Whereas, The birds of this State are useful to the farmer, gardener, and horticulturist, from the great amount of noxious insects which they annually destroy; and,
>
> Whereas, It is the judgment of this General Assembly that their wanton and useless destruction should not only be strictly prohibited, but that every encouragement be given for their rapid propagation; therefore, *Be it enacted*—.

The act forbade the killing, ensnaring, or trapping of any of the birds of the State, with the exception of birds of prey, migratory aquatic birds, and food birds which might be hunted or trapped under the general game laws. The eggs and the young of the birds were accorded a like measure of protection. Violators were subject to a fine of from five to twenty-five dollars and costs. The killing of birds for scientific purposes, however, was to be permitted provided that "satisfactory proof" was submitted that the birds had

165 *Laws of Iowa*, 1868, Ch. 113.

been taken for such reasons. This last provision proved insufficiently stringent, as will be seen.[166]

The Fourteenth General Assembly turned its attention to the problem of further protection for game birds and animals. From the petitions which were received by the legislature, particularly the lower chamber, it was evident that the people were anticipating not only more stringent provisions with respect to the game already protected, but in addition some measure of protection for fur-bearing animals.[167]

Thus it is not surprising that an act was passed which extended by fifteen days the closed season on deer, elk, and prairie chicken. Moreover the trapping of any of the above, or of any woodcock, quail, grouse, pheasant, or turkey was forbidden during any part of the year except on one's own premises. The prohibition of the ensnaring, netting, or trapping of quail, for which the Twelfth General Assembly had provided until December 1, 1872, was now made permanent and was extended to prohibit also the killing of quail by other methods. For this provision in the act the Senate was mainly responsible, but its effectiveness was in large measure nullified by another clause which the House insisted be made a part of the law. This permitted the shooting of quail on the premises of another, with the latter's permission, "within the time designated in the act to which this is an amendment", meaning apparently from September 12th to December 15th. The act also declared a closed season on beaver, mink, otter, and muskrat between April 1st and November 1st of each year, the trapping or ensnaring, as well as the shooting, of these

[166] *Laws of Iowa*, 1870, Ch. 74.

[167] *Journal of the House of Representatives*, 1872, pp. 80, 120, 160, 229, 294, 373, 385, 405; *Journal of the Senate*, 1872, p. 236.

fur-bearing animals being forbidden during this period.[168] During the extra session for the purpose of codification, the Fourteenth General Assembly made a few minor changes in the game laws.[169]

The Fifteenth General Assembly enacted a law which, though strengthening the game laws in certain details, deprived the prairie chicken of a very considerable measure of protection. The act declared illegal the shooting or killing of prairie chickens "between the first day of December and the fifteenth of August next following", but only when the birds so taken were to be shipped "to any point within or without the state for the purpose of selling the same for profit". Thus the shooting of prairie chickens for the purpose of sale was permitted during three and one-half months of the year, and their shooting for private consumption was allowed throughout the entire year. The act did, however, extend slightly the closed season on deer.

It provided furthermore that the shipment of game birds or animals legally killed should be lawful only when oath was taken by the shipper to the effect that the birds or animals were not being transported "for sale or profit". The trapping of game birds (including the prairie chicken) was prohibited at any time of the year, but, according to the letter of the law, the trapping of game animals during the closed season was not prohibited under the game act of the Fourteenth General Assembly. In all the various prohibitions of the act, with the exception of that involving the prairie chicken, the reservation "except upon one's own premises" was omitted, thus extending the protective hand of the State to the game on a person's property which

168 *Journal of the Senate,* 1872, p. 628; *Journal of the House of Representatives,* 1872, p. 868; *Laws of Iowa,* 1872, Ch. 217.

169 *Code of 1873,* Sec. 4048.

formerly might be killed by the owner even during the closed season. The shooting of quail, however, "upon any inclosed or improved premises, with the consent of the owner or occupant thereof" was permitted during the last three months of the year.[170]

But the legislature was soon to regret its action in permitting the killing of prairie chickens for commercial purposes and the Sixteenth General Assembly, by unanimous vote in both houses, prohibited the killing of prairie chickens for the purpose of shipping the same with intent to sell, by "any person, anywhere, at any time of the year".[171]

And in an act with many provisions the Seventeenth General Assembly completed the restoration of the protection which had been accorded the prairie chicken prior to the legislation of the Fifteenth General Assembly. Indeed, it did slightly better. It extended the closed season to include the period of nine months between December 1st and September 1st of the year following. Minor changes were made in the closed season periods with respect to woodcock, ruffed grouse, wild turkey, and quail. The killing of duck, snipe, goose, and brant was prohibited between May 1st and August 15th. The clause prohibiting ensnaring or trapping applied to game animals as well as birds.

This law marks also the first prescription of a "bag limit" for game birds. The killing during any one day by a single individual of more than twenty-five of "either kind of said named birds" — grouse, prairie chicken, snipe, woodcock, or quail — was forbidden.

The act further provided that possession of game birds or animals within five days of the end of the open season (but not for longer than this) should be legal. Moreover

[170] *Laws of Iowa*, 1874, Ch. 69.

[171] *Laws of Iowa*, 1876, Ch. 122.

the shipping of game outside of the State was prohibited entirely; but, as in the case of the act passed by the Fifteenth General Assembly, upon the making of a proper affidavit, game birds not to exceed one dozen in any one day might be shipped to points within the State, though not for sale.

The seven months of closed season on fur-bearing animals was continued, but the killing, ensnaring, or trapping of any of these animals was permitted during the closed season where necessary to protect private property from injury.

Substantial increases were made in the fines imposed for violations of the provisions of the law. A new clause declared the swivel-gun an illegal weapon for the shooting of game, and also prohibited the use of "medicated or poisoned food" in the taking of game birds.

To promote enforcement of the law, it was provided that in the case of every prosecution an attorney was to be appointed by the court to manage the case for the State. Such attorney was entitled to a fee of ten dollars, to be included in the costs. And the informant was also declared to be entitled to an amount equal to one-half of the fine imposed, the same to be in like manner included in the costs.[172]

After the passage of such a comprehensive law it was almost expected that there would be a lull in the activity of the following General Assembly with respect to game protective legislation. One law, however, was passed in the last day of the session by a bare constitutional majority of one. This act withdrew the protection accorded snipe by the Seventeenth General Assembly, and the period of closed season on the pinnated grouse — prairie chicken — was

172 *Laws of Iowa*, 1878, Ch. 156.

diminished by fifteen days.[173] The Twentieth General Assembly, however, reëstablished the closed season on the prairie chicken between December 1st and the following September 1st. The Twentieth General Assembly also declared illegal for a period of two years, between October 1, 1884, and October 1, 1886, the taking of quail in any manner whatsoever "except for the preservation of the same during the winter months".[174]

The early days of the Twenty-second General Assembly were marked by a flood of petitions against "any change in the game laws". Apparently the fear was that the restrictions would be made more stringent. Some twenty-five or more petitions of this nature were received by the House alone, in addition to the presentation of remonstrances by twenty-seven representatives of as many counties. One of the petitions received by the Senate was that of "500 legal voters of the ninth senatorial district, protesting against any change in the game laws to abolish the spring shooting of water fowl."[175]

The petitions were effective. No law pertaining to game was passed by the Twenty-second General Assembly, or indeed for nine years thereafter. The Twenty-second General Assembly did, however, increase the measure of protection accorded song birds by requiring every peace officer, under penalty of a fine, to file before a justice of the peace an information against any person whom he knew to have violated the non-game bird protective law. The act specifically declared the English sparrow to be exempt from

[173] *Journal of the House of Representatives*, 1880, pp. 749, 750; *Laws of Iowa*, 1880, Ch. 193.

[174] *Laws of Iowa*, 1884, Chs. 67, 164.

[175] *Journal of the Senate*, 1888, p. 88; *Journal of the House of Representatives*, 1888, pp. 81, 93, 94, 120, 126, 127, 134, 135, 151, 158, 221.

the regulations pertaining to non-game birds in general.[176]

Although, as pointed out above, no game protective legislation was enacted for a period of nine years, bills with this end in view were introduced from time to time during the various sessions of the legislature. One of these — a bill to protect the Chinese or ring-neck pheasant — passed the House but not the Senate; in the latter body, indeed, it never came to a vote.[177] The Twenty-fifth General Assembly prohibited hunting upon "cultivated or enclosed lands" without the owner's permission, but this belongs in the sphere of trespass rather than game legislation.[178]

The Twenty-sixth General Assembly, however, at its extra session made some fairly substantial changes in the existing game protective legislation. A month was added to the period of the closed season on the ruffed grouse, wild turkey, and quail, leaving but two months during which these birds might be hunted. The Twenty-seventh General Assembly in an act concerning these birds did not reduce the length of the closed season but changed the period during which their hunting was forbidden from December 1st — October 1st to January 1st — November 1st.[179] A month was added to the closed season on wild duck, goose, and brant.

Protection for the first time was accorded the squirrel — gray, fox, or timber — its trapping or killing being forbidden between January 1st and June 1st. No ruffed grouse or wild turkey was to be taken prior to January 1, 1900, and the shooting of quail on the public highway was

176 *Laws of Iowa*, 1888, Ch. 103.

177 *Journal of the House of Representatives*, 1894, pp. 355, 356; *Journal of the Senate*, 1894, p. 652.

178 *Laws of Iowa*, 1894, Ch. 64.

179 *Laws of Iowa*, 1898, Ch. 66.

declared illegal. The use of artificial ambushes, "sneak boats", or other presumably unsportsmanlike devices were prohibited, though decoys in the hunting of aquatic birds were to be permitted. Shooting from any of the waters of the State between sunset and sunrise was forbidden.[180]

Another provision of the codification act aimed at increasing the effectiveness of the acts of the Thirteenth and Twenty-second General Assemblies concerning non-game birds by naming specifically the varieties which were not to be killed at any time. These included the "whippoorwill, night-hawk, bluebird, finch, thrush, linnet, lark, wren, martin, swallow, bobolink, robin, turtle-dove, catbird, sandpiper, snowbird, blackbird, or any other harmless bird except bluejays and English sparrows". The protection extended to the nests and eggs of the birds. An exception was made in the case of "specimens for use of taxidermists". The act also declared the removal of nests from buildings to be lawful and "the keeping of song birds in cages as domestic pets".[181] In 1902, however, the sandpiper was withdrawn from the song bird class.[182]

But perhaps the most potentially important clause in the codifying act was that which, by creating the office of Fish and Game Warden, provided for the enforcement of the game protective laws in the same manner as general provision had been made some twenty-five years previously for the enforcement of the fish protective laws. The act, moreover, by specifically authorizing the appointment of deputies, rendered more likely the better enforcement of both the game and fish protective laws.[183]

[180] *Code of 1897*, Sec. 2551.

[181] *Code of 1897*, Sec. 2561.

[182] *Laws of Iowa*, 1902, Ch. 103, Sec. 9.

[183] *Code of 1897*, Secs. 2539, 2562, Ch. 1.

The need for these changes had long been recognized. By 1895 the violations of the game laws had become so flagrant that the State Fish Commissioner had been moved to write:

> In a short time . . . . if our game is not better protected there will not be any need of wardens or law, as the prairie chicken, quail, woodcock and plover will have all been destroyed through the greed of poachers, as they have been in the eastern states. The legislature should not hesitate to at once devise some method for the better protection of these birds.[184]

And in a previous report of the Commissioner appears the following:

> I have received this year, two hundred or more letters from all parts of the State, requesting me to come immediately and enforce the game law, as the manner in which game was being slaughtered out of season was a disgrace to the State. As this does not come under my supervision, under the present law, I could afford no relief. I would respectfully call attention to the matter and trust such enactment will be made by the legislature as will afford the relief asked for.[185]

The codifying act of the Twenty-sixth General Assembly, doubtless inadvertently, contained no provision granting protection to deer, but the Twenty-seventh General Assembly declared unlawful the killing, maiming, trapping, injuring, or capturing by any method of deer, elk, or goat, "except when distrained as provided by law." Violators were subject to a fine or jail sentence, or both.[186]

As noted in the chapter on fish protective legislation, an act was passed by the Twenty-seventh General Assembly authorizing the Fish and Game Warden to seize without

184 *Biennial Report of the State Fish Commission of Iowa,* 1894-1895, p. 11.

185 *Biennial Report of the State Fish Commission of Iowa,* 1892-1893, p. 16.

186 *Laws of Iowa,* 1898, Ch. 65.

warrant fish or game illegally taken, or unlawful devices used in the taking of fish or game.[187]

In the first biennial report issued by the Fish and Game Warden as such, the passage of a non-resident hunter's license law was urged as a means of game protection. It was pointed out that laws of this sort had already been passed by the legislatures of the neighboring States of Illinois, North Dakota, South Dakota, Minnesota, and Wisconsin, the license fee for non-resident hunters in these States being in most cases twenty-five dollars. The report went on to state that the effect of the passage of these laws had been in some measure to drive the hunters from these States into Iowa where no license system prevailed. "The counties in Iowa bordering on the Mississippi river", the report continued, "have been greatly annoyed by hunters from Wisconsin and Illinois, who persist in coming here and killing for market game that rightfully belongs to the taxpayers of Iowa." This portion of the report concluded with the statement that, "Our people should have the same rights and privileges extended to them in this respect that the legislatures of other states give their constituents."[188]

This recommendation was not made in vain. Indeed as early as the Seventeenth General Assembly a bill had been introduced in the House which would have prohibited non-residents from killing game, though the Judiciary Committee, to which the bill had been referred, reported it adversely, probably doubting its constitutionality as well as its expediency.[189] An act providing for the licensing of non-resident hunters was passed by large majorities in both

[187] *Laws of Iowa*, 1898, Ch. 64, Secs. 1, 5.

[188] *Biennial Report of the State Fish and Game Warden of Iowa*, 1898-1899, p. 8.

[189] *Journal of the House of Representatives*, 1878, pp. 501, 579.

houses during the course of the Twenty-eighth General Assembly. The debate on the bill, at least in the Senate, showed that some of the legislators favored more stringent provisions with respect to non-residents than were actually incorporated into the bill. One proposed amendment would have fixed the license fee at twenty dollars; another would have prohibited non-residents giving away or selling any of the game taken by them; still another would have prohibited non-resident hunting entirely. An objection to the bill, voiced both in the House and the Senate, was that it provided for licensing by counties rather than by the State as a whole. One member of the House, indeed, voted against the bill solely because of this provision. A change from the county to the statewide basis in the licensing system was later effected.[190]

The act declared that in order to hunt legally in Iowa non-residents must procure a license "from the county auditor of the county in which said game is pursued, hunted, or killed." As a preliminary to the issuing of a license, the county auditor was to ascertain that the individual making application was "a careful and prudent person and accustomed to the use of fire-arms". The fee was fixed at ten dollars, an additional charge of fifty cents being made to compensate the county auditor for the issuing of the license.

A license did not authorize a non-resident hunter to take more than twenty-five birds or animals per day — the number fixed by previous legislation with respect to game birds. Nor did it sanction hunting on "the enclosed or cultivated lands of another without a permit in writing from the owner". The license, of course, permitted the hunting of the various game birds and animals only during the open sea-

190 *Journal of the House of Representatives*, 1900, pp. 307, 308; *Journal of the Senate*, 1900, pp. 437, 497, 498.

son. The money derived from the licenses was to be credited by the county treasurer in each county to a fund for game protection "to be used to defray the expenses of enforcing the law for the protection of game". The license was declared to be non-transferable. The enforcement of the act was placed in the hands of "county attorneys and all peace officers".[191]

An act of the Twenty-ninth General Assembly withdrew the sandpiper from the song bird class but in certain details made more stringent the protective laws. The rail, plover, and march or beach bird, in addition to the sandpiper, were granted the same measure of protection as the wild duck, goose or brant, and their destruction was forbidden between April 15th and September 1st. Three months were added to the period of closed season on squirrel.[192]

It will be recalled that the Seventeenth General Assembly had established a daily bag limit for the prairie chicken, snipe, woodcock, quail, and ruffed grouse. The Thirtieth General Assembly, in response to a recommendation of the Fish and Game Warden, extended the daily bag limit of twenty-five to include the wild turkey, duck, goose, and brant. The same act, however, excepted ducks from the general requirement that not more than twenty-five birds were to be had in possession at any one time "unless lawfully received for transportation".[193]

Another act of the Thirtieth General Assembly presented a good example of public opposition to inhumane practices. It appears that certain gun clubs throughout the State,

[191] *Laws of Iowa*, 1900, Ch. 86.

[192] *Laws of Iowa*, 1902, Ch. 103, Sec. 7.

[193] *Biennial Report of the State Fish and Game Warden of Iowa*, 1902-1903, p. 8; *Laws of Iowa*, 1904, Ch. 95.

which to-day doubtless employ the so-called clay pigeons for their sport, then used live pigeons as targets. After being suddenly released from traps in which they had been confined, the birds would be shot at by the hunters, obviously with the purpose of making a killing. The practice might have been condoned had not the gambling element been present in it. Various cruel expedients were developed with a view to expediting or retarding the flight of the pigeons as suited the purpose of the gambler. These included such heartless measures as the placing of pins in the bodies of the birds and the indiscriminate application of chemicals and "dope".

A more inhumane practice could not readily be imagined. That this was the opinion of the people of Iowa generally was evidenced by the flood of petitions which poured into the legislature — Senate and House — asking the abolition of the barbarous practice. No less than thirteen such petitions were received in the Senate, and as many as fourteen in the House. As a result a law was passed prohibiting the inhumane practice and providing penalties of fine or imprisonment for the law's violation.[194]

It will be remembered that the Twenty-seventh General Assembly had changed the period of closed season on ruffed grouse, wild turkey, and quail from the ten months between December 1st and October 1st to the ten months between January 1st and November 1st.[195] At first thought there might appear to be little significance in this change, since the actual length of the closed season was not reduced. That this alteration was not inconsequential, how-

194 *Journal of the Senate*, 1904, pp. 196, 207, 235, 250, 272, 290, 305, 365, 392, 449, 567; *Journal of the House of Representatives*, 1904, pp. 214, 236, 242, 243, 252, 254, 255, 290, 311, 312, 335, 347, 371, 434; *Laws of Iowa*, 1904, Ch. 96.

195 *Laws of Iowa*, 1898, Ch. 66.

ever, was clearly brought out by the Warden in his thirteenth biennial report. The change in the time of year covered by the protective law was a mistake, he wrote, "for as soon as the snow came the birds could be easily tracked and killed in large numbers by the market and pot hunters. If the law is not changed, making the open season from October 1st to November 30th, there will soon not be any quail to protect."[196]

The same recommendation was repeated in the two following reports, though in the second of these a reduction by fifteen days in the open season on quail was also recommended.[197] Apparently, however, public sentiment was opposed to greater stringency in the game laws at the time. At any rate several petitions to this effect were received by the Thirtieth General Assembly.[198] The legislature did, however, restrict the open season on quail and the other birds of that category to the period between October 1st and December 15th.[199] A bill also passed the Senate prohibiting the killing of any quail for three seasons — until January 1, 1906 — but upon the recommendation of the Fish and Game Committee the bill was indefinitely postponed in the House.[200]

The Thirty-first General Assembly turned its attention to the problem of granting greater protection to song birds. The Commissioner had issued a timely warning when he wrote in 1899:

[196] *Biennial Report of the State Fish and Game Warden of Iowa*, 1898-1899, p. 16.

[197] *Biennial Report of the State Fish and Game Warden of Iowa*, 1900-1901, p. 10, 1902-1903, p. 6.

[198] *Journal of the Senate*, 1904, pp. 217, 220, 250, 290.

[199] *Laws of Iowa*, 1904, Ch. 92, Sec. 3.

[200] *Journal of the Senate*, 1904, pp. 306, 366, 367, 564, 565; *Journal of the House of Representatives*, 1904, p. 822.

If the fashion of decorating bonnets and hats with the stuffed skins of song birds could be abandoned, the lives of thousands of Iowa's bright-plumaged birds would be saved. Several species of these beautiful birds have become nearly extinct on account of the quite general slaughter of them for that purpose.[201]

An act of the Thirty-first General Assembly endeavored to correct this situation. The purchase, sale, or transportation of song birds — in whole or in part — was prohibited, irrespective of whether the birds had been taken within or without the State. Exceptions were made, however, with respect to those who wished to collect birds, nests, or eggs for scientific purposes. But no one was entitled to such a privilege who did not hold a collector's certificate. This was to be issued by the Fish and Game Warden to any "properly accredited" person not less than fifteen years of age who had previously presented to the Warden "written testimonials from two well-known ornithologists who must be residents of Iowa, certifying to the good character, and fitness of said applicant to be entrusted with such privilege". Not only was the certificate subject to revocation in case of the violation of the terms under which it had been granted, but the holder of it under such conditions was liable to a fine or imprisonment, or both, "at the discretion of the court". The certificates were to expire annually, but were subject to renewal. The birds not covered by the provisions of this act included game birds and birds considered either destructive or not in the game or song bird classes, such as the crow, hawk, blackbird, sparrow, and the great horned owl.[202]

A single brief act directly involving game protection was enacted by the Thirty-second General Assembly, and this

201 *Biennial Report of the State Fish and Game Warden of Iowa*, 1898-1899, p. 17.

202 *Laws of Iowa*, 1906, Ch. 108.

was of some significance, as will be noted in a later connection. It prohibited the killing of the ring-neck pheasant — substantially the same as the Mongolian, English, or Chinese pheasant — prior to October 1, 1915, a period of eight seasons.[203]

It will be recalled that the Twenty-eighth General Assembly had enacted a law providing for the licensing of non-resident hunters. The Thirty-third General Assembly provided for the licensing of resident hunters also.

This accomplishment was not effected without a struggle. A resident hunters' license system had first been recommended by the Warden in 1903, and the matter had been considered in committee by the Thirtieth General Assembly, as indeed it had been by the Twenty-ninth General Assembly, but no bills providing for a non-resident hunter's license were actually reported.[204]

In 1905 the Warden returned to the attack, citing the numerous neighboring States which had already enacted resident hunters' license laws and in each case the annual revenue received therefrom. "From reports and letters received from all the above states", he wrote, "it is evident that the law is satisfactory to both the sportsman and the state. It prevents in a large measure the indiscriminate shooting and killing of everything that comes in the way of the small boy and foreigners, from a game and song bird to the farmers' tame chickens and stock." He went on to point out that the object of resident hunters' licenses was "not so much to restrict hunting as to regulate it." Such licensing afforded a convenient means of hunter identification and increased the amount of funds available for game

[203] *Laws of Iowa*, 1907, Ch. 134.

[204] *Biennial Report of the State Fish and Game Warden of Iowa*, 1902-1903, p. 6, 1904-1905, p. 16.

law enforcement and for other purposes. By means of a map he showed that every State bordering on Iowa and nearly every State except Iowa in the central and northwestern areas of the country had a license law for resident hunters.[205]

In his next official report the Warden urged, perhaps more strongly than ever, the passage of such a license law. He quoted from a report of the Fish and Game Warden of Missouri to show how successful the resident license law of that State was proving. He argued that such a law by restricting "the small boy, the foreigner and the roving hunter from killing everything that comes to their gun, including all insectivorous birds", would be a boon to the agriculturist and horticulturist. He summarized his case by "most urgently" recommending the establishment of a resident license system as "it would prevent a large amount of unlawful hunting and at the same time place in the State treasury for the enforcement of the law not less than $30,000 per annum."[206]

Nor was the Warden alone in urging a resident license law. The Governor of the State in his message to the Thirty-second General Assembly had this to say concerning the matter:

> In his report to me, the State Fish and Game Warden has strongly recommended a radical amendment to our law with reference to hunters' licenses. I have not been able to examine this subject with the care that would warrant me in adopting his opinion and giving it to you as my own. I do, however, bring the matter to your special attention, and ask that you give his recommendation the most careful consideration.[207]

[205] *Biennial Report of the State Fish and Game Warden of Iowa*, 1904-1905, pp. 16-18.

[206] *Biennial Report of the State Fish and Game Warden of Iowa*, 1906-1907, pp. 4-9.

[207] *Journal of the House of Representatives*, 1907, p. 23.

Petitions, also urging a resident hunters' license law, were received by the Thirty-second General Assembly, but the much desired act was not enacted by the legislature during this session. A bill providing for a license for resident hunters was passed by the House, but it died in the Sifting Committee of the Senate.[208] By no means discouraged, the Warden returned once more to the attack in 1908. Having exhausted all the important arguments in previous reports the Warden could but reëmphasize these.[209]

The long struggle was not in vain. A law of the sort recommended was enacted by the Thirty-third General Assembly. In the House there was a large majority in its favor and in the Senate the vote was unanimous.[210]

The law prohibited the hunting of wild animals or birds within the State without a license whether by residents or non-residents. For the issuance of licenses to applicants under eighteen years of age the written consent of parents or guardian was required. The possession of a gun in field or forest without a license was to be considered as "prima facie" evidence of violation of the act. The license was to be exhibited to anyone desiring to see it, the purpose of this provision being of course to promote the law's enforcement. The fee for residents was fixed at one dollar annually, that for non-residents was kept at ten dollars, as established by act of the Twenty-eighth General Assembly.

The license was subject to revocation if the holder of it hunted on enclosed or cultivated lands without permission of the owner or if the license was found in the possession

[208] *Journal of the Senate*, 1907, pp. 541, 578, 1293; *Journal of the House of Representatives*, 1907, pp. 859-862.

[209] *Biennial Report of the State Fish and Game Warden of Iowa*, 1907-1908, pp. 9-15.

[210] *Journal of the House of Representatives*, 1909, p. 1213; *Journal of the Senate*, 1909, p. 1380.

of one other than the person to whom it had been issued. Nor did the license carry with it the privilege of hunting on any public highway. The day's bag limit of twenty-five, established by previous act as regards licensed non-resident hunters, was now made applicable to both resident and non-resident sportsmen. Since 1878, however, there had been a bag limit with respect to birds of twenty-five. The funds derived from the licenses were to be placed to the credit of the fish and game protection fund. For hunting on one's own property no license was required.[211]

The chief point to be emphasized, however, is that this law provided for State rather than county licensing. Some objections had been raised to the non-resident hunters' license law enacted by the Twenty-eighth General Assembly on the grounds that under it the sportsman could legally hunt only in that county from which his license had been issued. Thus, an individual who desired to hunt in more than one county could not lawfully do so without holding a license issued from each of the counties. Indeed one member of the House had voted against the non-resident hunters' license law solely because of its county basis.

The Fish and Game Warden had strongly recommended the changing of the non-resident hunters' license law so as to enable the holder of a license to hunt in any county in the State. Not the least of his arguments was his statement that "all other states", having as they did the state wide plan of licensing, permitted Iowans to hunt anywhere in the State upon the payment of the one license fee, and that Iowa should therefore reciprocate. The same recommendation was repeated in two subsequent reports.[212]

211 *Laws of Iowa,* 1909, Ch. 154.

212 *Biennial Report of the State Fish and Game Warden of Iowa,* 1904-1905, pp. 18, 19, 1906, p. 9, 1907-1908, p. 15.

The license law of the Thirty-third General Assembly carried out this recommendation by providing that the license, though issued by the county auditor and bearing the latter's seal and signature, "shall authorize its holder to hunt . . . . in any county in the state".[213]

But the licensing act was not the only important piece of wild-life legislation enacted by the Thirty-third General Assembly. That body also provided more stringent regulations with respect to the buying, selling, and transportation of game.

In the first place, the prohibition against killing for shipment, adopted with regard to the more important game birds by the Seventeenth General Assembly, was extended to include game birds and animals in general. In the second place, the buying or selling by "any person, firm or corporation" of game birds or animals, dead or alive, prohibited in 1878 during the closed season or within five days thereof, was now prohibited at any time, without regard to season. Thirdly, the regulations with respect to the shipping of game were made more stringent. Game which had been lawfully taken in another State and lawfully brought into Iowa might rightfully be held in possession, "but the burden shall rest upon the person in possession to establish the fact that such game so shipped into the state was lawfully killed and lawfully shipped into the state."[214]

This legislation, in general, aimed to prevent the violations of the game laws which had resulted through technical defects in the legislation previously enacted. The time was apparently ripe for the passage of such an act. Petitions received in both the House and the Senate during the course of the Thirty-third General Assembly had urged

[213] *Laws of Iowa*, 1909, Ch. 154, Sec. 4.

[214] *Laws of Iowa*, 1909, Ch. 153, Sec. 5-8.

more stringent fish and game laws, although in the House some petitions had been received opposing any change in the wild-life laws.[215] As pointed out in the previous chapter this act failed to become law because of a technicality and was reënacted by the Thirty-sixth General Assembly.[216]

The Twenty-seventh General Assembly had prohibited the killing, trapping, or capturing of deer, elk, or goat "except when distrained as provided by law." The Thirty-fourth General Assembly, in order to prevent the abuse of this provision of the act, prescribed that when the distraint of deer was necessary it should be done "under the authority and direction of the state fish and game warden". The Thirty-fifth General Assembly made still more stringent the provisions governing this matter by making prerequisite to any distraint of deer the recognition by the Warden or his subordinates that such distraint was necessary.[217]

No general protection law was enacted by the Thirty-sixth General Assembly, but changes were made in certain important details. The hunters' license law was extended to apply to trappers as well; and the closed season on trapping was extended to include the month of November. By another act a resident alien was required to pay a non-resident hunter's fee. The daily bag limit for prairie chickens was fixed at eight, and for quail at fifteen, while the limit of twenty-five for game birds or animals in general was maintained. Not more than sixteen prairie chickens might legally be held in possession by any individual at one time "unless lawfully received for transportation".[218]

215 *Journal of the Senate*, 1909, pp. 584, 693, 983; *Journal of the House of Representatives*, 1909, pp. 292, 404, 644.

216 *Laws of Iowa*, 1915, Ch. 290.

217 *Laws of Iowa*, 1898, Ch. 65, 1911, Ch. 118, Sec. 3, 1913, Ch. 206.

218 *Laws of Iowa*, 1915, Chs. 263, 276, 319.

This legislation was substantially in accord with the Warden's recommendations.[219] Also in keeping with the Warden's recommendations was the act extending the closed season on pheasants until October 1, 1917, and including "Hungarian partridges or other imported game birds" within this prohibition.[220]

During the period of the Thirty-seventh General Assembly excitement ran high as to whether legislation would be enacted protecting quail for a number of years, as previously had been done in the case of the partridge and the pheasant. Petitions — some favoring, some opposing a long period during which the killing of the quail would be prohibited — poured into the legislature, particularly the House. A capitulation of the petitions received in the House reveals that twenty-eight favored a semi-permanent closed season on quail and nineteen opposed it. An act prohibiting the killing of quail during the five year period extending until November 1, 1922, was passed by the House, the vote being 61 to 32, thus representing with a measure of accuracy the will of the people as expressed through the petitions. The bill passed the Senate by a vote of 35 to 14. One member of this body, in explaining his negative vote, said: "I have presented numerous petitions from citizens of my district opposed to House File No. 114 [the bill in question] sent by men of judgment and experience and most of whom are not hunters, and believing that they fairly represent the majority of the people of my district I vote no."[221]

[219] *Biennial Report of the State Fish and Game Warden of Iowa*, 1913-1914, p. 9.

[220] *Biennial Report of the State Fish and Game Warden of Iowa*, 1913-1914, p. 10; *Laws of Iowa*, 1915, Ch. 301.

[221] *Journal of the House of Representatives*, 1917, pp. 504, 544, 566, 567, 734, 735, 736, 737, 741, 772, 791, 800, 849, 907, 908, 940, 941, 944, 945, 984, 1000, 1117, 1150, 1261, 1359; *Journal of the Senate*, 1917, p. 1529.

The Thirty-seventh General Assembly also declared a closed season on prairie chickens until the year 1922; and the closed season on the ring-neck pheasants and Hungarian partridges was extended from October 1, 1917, to October 1, 1922.[222] In the discussion in the House relative to the prairie chicken act, an amendment was offered which would have substituted for the five year period during which the taking of prairie chicken was absolutely prohibited, two months of open season each year and the reduction of the day's bag limit on prairie chickens from eight to four. This amendment was lost.[223]

This Assembly also changed the closed season on the trapping of fur-bearing animals from the period between April 1st and December 1st to that between March 15th and November 15th. The purpose of this act was to guard against the taking of unprimed skins. This act reëmphasized the prohibition against the having in possession of fur-bearing animals during the closed season, except during the first five days of the same, but excepted "green hides in process of manufacture" from this requirement. The molesting, injuring, or destroying of any muskrat house was also prohibited.[224] A bill providing for a closed season on raccoons passed the House and, in an amended form, the Senate, but owing to failure on the part of the House to concur in the Senate's amendment the bill failed to become law.[225]

No game protective legislation whatever was enacted by the Thirty-eighth General Assembly, although a bill passed

222 *Laws of Iowa*, 1917, Chs. 111, 202.

223 *Journal of the House of Representatives*, 1917, p. 615.

224 *Laws of Iowa*, 1917, Ch. 396.

225 *Journal of the House of Representatives*, 1917, pp. 1061, 1062, 1326; *Journal of the Senate*, 1917, pp. 1203, 1204.

the House, which unfortunately was allowed to die in the Senate Sifting Committee. This would have limited the open season on ducks, geese, and migratory birds generally to the period between September 15th and December 15th, thus permitting the killing of these birds during but three months of the year instead of seven and one-half months. The need for such a change had been pointed out by the Warden. Efforts upon the part of individual Senators, however, to secure the passage of acts repealing the semi-permanent periods of closed season on quail and the prairie chicken were not successful.[226]

The Thirty-ninth General Assembly, apparently without serious opposition from within or without the legislature, extended to 1927 the closed season on the prairie chicken, the quail, the ring-neck pheasant, the partridge, and "other imported game birds". The effect of this action with respect to the ring-neck pheasant will be considered in another connection. Another law of the Thirty-ninth General Assembly prohibited the killing or trapping of raccoons from February 1st until October 15th.[227] A bill of the Thirty-seventh General Assembly which aimed to provide this protection had failed to become law, as pointed out above.

The Fortieth General Assembly continued the policy of semi-permanent closed seasons with respect to game birds by prohibiting the killing of any ruffed grouse prior to November 1, 1932, a period of nine years. It also extended protection to skunks and skunk-dens to the same degree as it already existed with regard to raccoons and muskrat

[226] *Journal of the House of Representatives*, 1919, pp. 2060, 2061; *Journal of the Senate*, 1919, pp. 1584, 1589, 2088; *Biennial Report of the State Fish and Game Warden of Iowa*, 1913-1914, p. 10.

[227] *Laws of Iowa*, 1921, Chs. 25, 33, 85, 87.

dens, respectively; and an additional month was added to the closed season on both skunks and raccoons.[228]

One law, long on the statute books, was repealed by the Fortieth General Assembly. This law had prohibited the use by hunters of an artificial ambush "or other device used for concealment in the open water". When this law was enacted the strategy of artificial concealment was considered not entirely sportsmanlike since there was then an abundance of natural forest and woodland growth, and game birds could be hunted readily enough without the use of improvised ambushes. But with the clearing of the swamps and the "improvement" of the lands serving as the haunts of wild life — apparently ever an accompaniment of an increase in population within a territory — the use of an artificial ambush became in many cases necessary if water-fowl was to be hunted with a reasonable degree of success. In this light, the action of the Fortieth General Assembly in legalizing a practice which had been outlawed since 1897 appears not improper.[229]

The Fortieth General Assembly, in special session for the purpose of revising and codifying the law of Iowa, also made a number of more or less important alterations in the game laws.

The number of days during which fur-bearing animals might be had in possession after the close of the season was raised from five to ten. The hunting or shooting of game birds which previously had been forbidden between sunset and sunrise was now prohibited between sunset and thirty minutes before sunrise. The blue-jay and the English starling were added to those birds not accorded protection, and the killing of such birds as the gull, heron, and others was

[228] *Laws of Iowa*, 1923, Chs. 29, 31.

[229] *Laws of Iowa*, 1923, Ch. 30.

to be permitted "on the grounds and waters of any public or private fish hatchery within the state by the owner, superintendent, or employee thereof." The reason for this measure is obvious.

The prohibition of the transportation or offering for transportation of game *for sale* was continued; but a non-resident hunter was permitted to ship game which he had lawfully taken out of the State to his place of residence with certain limitations upon the number which might be shipped in any one day. This number varied from eight in the case of "male imported pheasant" to fifty in the case of water-fowl. These new limitations applied also to game shipped to points within the State, other regulations concerning which had been made by previous General Assemblies.

A uniform penalty for violation of any of the game or fish laws was provided, involving a fine ranging from ten to one hundred dollars or a jail sentence of not more than thirty days. It was specifically provided that "each fish, fowl, bird, bird's nest, egg or plumage, and animal unlawfully caught, taken, killed, injured, destroyed, possessed, bought, sold, or shipped shall be a separate offence."[230]

One outstanding problem with respect to game protection was presented to the Forty-first General Assembly. This was the status of the ring-neck pheasant. It will be recalled that in 1907 a law had been enacted declaring a closed season on pheasants until 1915. This had been extended at subsequent sessions of the legislature, first to 1917, then to 1922, next to 1927, and ultimately to 1932. Thus by 1925 the killing or trapping of ring-neck pheasants had already been prohibited for eighteen years, and the Fortieth General Assembly in extra session had made of

[230] *Code of 1924*, Secs. 1766, 1770, 1776, 1780, 1783, 1789.

indefinite duration the prohibition of the killing or trapping of these pheasants.[231]

During this long period of protection the number of ring-neck pheasants in the northeastern part of the State had considerably increased. But in other parts of Iowa, particularly the southern half, they were not plentiful. It was but natural, then, that successive General Assemblies should have continued the protection afforded the pheasant.

But awaiting the Committees on Claims of the House and Senate of the Forty-first General Assembly were no less than eighty-five remonstrances from farmers and landowners of counties in the northern part of the State, asking damages from ten to three hundred and forty-five dollars for alleged destruction to their crops by pheasants. From these petitions it appears that potatoes, tomatoes, and corn were the crops chiefly affected by the activities of the birds. According to a portion of the affidavit of one of the claimants, the pheasants seemed to be particularly fond of corn which had already sprouted, their method of removing this being "both by means of scratching it out and also by digging it out with the bill."

The logic of the argument under which the petitioners presented their claims was simple. The claimants were forbidden by the State from killing or trapping the pheasants which were destroying their property. The State was liable for any damage, therefore, which accrued to landowners and farmers through the activities of the pheasants, so long as the destruction of these birds was forbidden.

The Attorney General, in submitting the claims to the proper committees of the legislature, stated that there would appear to be no moral or legal obligation on the part

231 *Code of 1924*, Sec. 1767.

of the State to pay these claims. He pointed out that when through the exercise of its police power in the interests of the general welfare, there are property losses on the part of a portion of the population, "the state is not liable for damages because of such legislation. To open such a field to claimants seeking damages would unquestionably place a burden upon the taxpayers that they should not be required to bear."

He did, however, refer to the case of State *v.* Ward[232] in which the killing of a deer by a property owner, contrary to law, was upheld, since the killing had been done to safeguard property, the right to protect property being held to be a constitutional right. The Attorney General concluded with the observation that the rule established in State *v.* Ward with respect to deer, in his opinion, "would apply to the right to kill pheasants, if it becomes necessary to prevent substantial injury to the property of the land owner."[233]

But the legislature apparently realized the probable situation if the rule laid down in State *v.* Ward were applied generally with respect to ring-neck pheasants. The result would doubtless be a general slaughter of the pheasants in that part of the State where they were abundant. If prosecutions were attempted, the courts would be crowded with cases in each of which the question of whether there had or had not been property damage would have to be determined by the court. And public opinion in the part of the State where pheasants were abundant would doubtless almost invariably favor the land-owners, juries being reluctant to convict in cases where there was a shadow of evidence sup-

[232] 170 Iowa 185.

[233] Report of the Attorney General in the matter of the claim of Andrew Austin and eighty-four others.

porting the property-owner in his contention that the killing of the pheasants was necessary to protect his property. The virtual disregard of the law which would not improbably follow under such circumstances might become general throughout the State, with the result that the statute prohibiting the killing of pheasants would ultimately be a dead letter.

The legislature solved the problem by amending the provision of the law respecting the permanent closed season on pheasants by vesting in the Fish and Game Warden discretionary power to cope with the situation.

The act provides that whenever one hundred and fifty or more farmers or land-owners of any county whose property had been damaged by pheasants shall so petition the State Fish and Game Warden in writing, the latter may authorize the killing or capturing of pheasants in that county for a temporary period. But during this time not more than twelve pheasants may be killed by any one person in a single day. There is no limit, however, to the number which may be captured alive, and to encourage the capture, rather than the killing of the pheasants, the Warden is authorized to offer a bounty not to exceed one dollar for each bird captured and delivered alive to him. The Warden is then to distribute these birds at his discretion to those parts of the State where they are scarce.[234]

Two other acts relative to game protection were enacted by the Forty-first General Assembly. One of these prohibits the killing of muskrat from October 15, 1925, to October 15, 1928. The other insures protection to trappers in possession during the closed season of fur-bearing animals which have been lawfully taken during the open season.[235]

[234] *Laws of Iowa*, 1925, Ch. 38.

[235] *Laws of Iowa*, 1925, Chs. 36, 37.

V

FISH AND GAME PROPAGATIVE LEGISLATION

In the realm of wild-life legislation the protective laws — those restraining or regulating directly or indirectly the taking of fish and game — hold the chief place. But no study of the subject with which we are concerned would be complete without an examination and discussion of the laws which have sought to increase the natural supply of fish and game through artificial means, thus compensating in some measure for the losses — legitimate and illegitimate — resulting from the taking of the wild creatures of field and stream.

It should be pointed out, however, that the relatively meagre amount of propagative legislation in Iowa is by no means a fair indication of the extent to which fish and game culture has been promoted by the Wardens and subordinate officials of the department. Particularly in recent years has the scope and scale of this work increased. It has been carried on, to be sure, under legislative sanction, but detailed laws concerning it, unlike the situation with respect to wild-life protection, have been neither necessary nor expedient. For the problem of the artificial propagation of fish and game is in large measure a technical one, the details of which must be determined by administrators, not legislators. Thus, in general, fish and game culture has been carried on under the general grants of authority vested in the Warden. Such legislation of a specific nature as has been enacted in this connection, however, merits consideration.

FISH

The first legislative action looking toward the promotion of pisciculture in Iowa was taken by the Fifteenth General

Assembly which appropriated three thousand dollars for the purpose of placing "in the lakes and rivers of Iowa . . . . any fishes or impregnated fish-spawn that may be furnished . . . . by the United States or in any other way free of expense to the state." The work was to be carried out by the newly appointed Fish Commissioners, under the direction of the Executive Council. The bill appears to have encountered no very serious opposition in either the House or the Senate.[236]

The next General Assembly enacted an act with far more comprehensive provisions concerning pisciculture. This was to be expected, since there was now in operation a State Fish Hatchery, established at Anamosa through the funds appropriated at the previous legislative session. The Fish Commissioner (for, as pointed out in Chapter I, the same act substituted a single commissioner for the three previously provided for) was first instructed by the act "to proceed without unnecessary delay to distribute among the several counties in the state, fairly and as equally as in the judgment of the commissioner may be to the best interest of the state, all the fish now on hand at the state hatching house at Anamosa, that are now ready and fit for distribution; *provided,* always, that counties that have heretofore been partially supplied shall receive less, in proportion to the numbers they have heretofore received."[237]

Very specific was the requirement in the second section of the act that the Commissioner was to procure and distribute five hundred thousand eels throughout the waters of the State. For this purpose one thousand dollars might be used. Another thousand was to be expended in encouraging the culture of fish native to Iowa waters.

236 *Laws of Iowa,* 1874 (Temporary), Ch. 74.

237 *Laws of Iowa,* 1876, Ch. 70, Sec. 1.

In accordance with a recommendation of the Fish Commissioners, the act declared the ownership of fish resulting from private pisciculture to be vested in those parties responsible, provided the pond or lake in which the culture was carried on had no "natural outlet". Another clause of this same act, again in accordance with the Commissioner's recommendation, provided for the purchase of the site of the State Fish Hatchery which up to this time had simply been rented.[238]

In order to facilitate the carrying out of the duties relative to fish propagation bestowed upon the Fish Commissioner, and in accordance with the Commission's own recommendation, the same act authorized the Commissioner to take fish for culture purposes from the waters of the State "by any method", notwithstanding the general restrictions upon the methods of taking fish prescribed in this act and in previous acts, as noted in other chapters. The law carried an appropriation for the biennial period of $8750, the Commission having requested $10,000. The same act required the Commissioner to submit to the Executive Council each year a report showing the number of fish distributed in the various public waters of the State and containing "such general information on the subject of fish culture as said commissioner may think proper".[239] This report was subsequently made biennial.[240]

An act embodying some fish culture provisions was enacted by the Seventeenth General Assembly, but these consisted chiefly of a more concise statement of the important

[238] *Biennial Report of the State Fish Commissioners of Iowa,* 1874-1875, p. 36; *Laws of Iowa,* 1876, Ch. 70, Secs. 4, 8.

[239] *Biennial Report of the State Fish Commissioners of Iowa,* 1874-1875, pp. 36, 73; *Laws of Iowa,* 1876, Ch. 70, Secs. 3, 5.

[240] *Laws of Iowa,* 1878, Ch. 80, Sec. 4.

provisions of the act we have just considered. It is of interest to note, however, that the duties of the Fish Commissioner, as outlined by this act, were confined to the promotion of fish culture, and did not specifically embrace the enforcement of the fish protective laws. His duties, as defined by the act, were "to have general charge and superintendence of the state hatching house . . . . to forward the restoration of fish to the rivers and waters of the state, and to stock the same with fish from said hatching house, and elsewhere". Later, as pointed out in previous chapters, the authority of the Warden was specifically extended to include the enforcing of the protective laws as well.[241]

The appropriation of the Seventeenth General Assembly for fish culture, however, was but $6000 and the next biennial appropriation was only $5000.[242] Even this amount was not granted by the House without some opposition upon the part of certain members of the Committee on Appropriations who submitted a minority report claiming that "a vast amount of money" had been spent "without demonstrating that there has been or ever will be any beneficial results to the people derived therefrom." The report went on to recommend that the property used for the fish hatchery be disposed of. Fortunately, for the interests of fish culture, the minority report was rejected.[243]

Appropriations of $5000 for fish propagation were made by both the Nineteenth and Twentieth General Assemblies, the latter, however, granting an additional amount sufficient to pay the annual rental of the fish hatchery at Spirit Lake, which had been established in June, 1880, by order of

241 *Laws of Iowa*, 1878, Ch. 80, Sec. 1.

242 *Laws of Iowa*, 1878, Ch. 80, Sec. 3, 1880, Ch. 100.

243 *Journal of the House of Representatives*, 1880, p. 428.

the Governor.[244] Thus relatively small appropriations continued to be made despite the Commissioner's statement in 1883 that, "Our appropriations are too small to do a heavy work that would tell very rapidly in Iowa waters".[245]

In 1886 the legislature provided for the discontinuance of the hatchery at Anamosa. As a matter of fact, the disposal of one of the hatcheries had been recommended by the Commissioner who was chiefly interested in the enforcement of the fish protective laws and had not the same measure of enthusiasm for pisciculture, particularly that involving the introduction of foreign varieties, as had his predecessor. However, by providing for the removal, so far as practicable, of the Anamosa hatchery to Spirit Lake, the act looked toward augmenting the remaining public hatchery.[246]

In the Twenty-first General Assembly one member of the Fish and Game Committee of the House favored the passage of a bill designed to abolish the fish department entirely, giving as his sole reason the fact that judging from the sixth biennial report of the Commissioner the attempt to introduce fish from outside the State into Iowa waters had proved a failure. Emphasis, so far as pisciculture was concerned, was subsequently placed chiefly on the hatching and distribution of fish native to Iowa. Despite the lull in enthusiasm for fish culture, however, the Twenty-second and successive Assemblies continued to make appropriations for the carrying on of the work.[247]

[244] *Laws of Iowa*, 1882, Ch. 99, 1884, Ch. 144; *Biennial Report of the State Fish Commission of Iowa*, 1879-1881, p. 5.

[245] *Biennial Report of the State Fish Commission of Iowa*, 1881-1883, p. 47.

[246] *Biennial Report of the State Fish Commission of Iowa*, 1883-1885, pp. 1-10, 28, 29; *Laws of Iowa*, 1886, Ch. 155.

[247] *Laws of Iowa*, 1888, Ch. 134.

Of an encouraging tenor was the report of a joint committee of the House and Senate of the Twenty-fifth General Assembly, appointed for the purpose of visiting the hatchery and reporting concerning their findings. "We are of the opinion", the report read, "that the appropriation of the Twenty-fourth General Assembly has been wisely and economically expended for the objects for which the same was appropriated." The report went on to say, however, that "while considerable good has no doubt been accomplished in the former line [fish propagation and distribution] and while the same should not be abandoned, yet we are of the opinion that the protection of fish now in the waters of the State from wholesale destruction by means of unlawful appliances, is at present the chief work of the Commission". The report recommended the purchase by the State of a fish-car for the more convenient distribution throughout the State of fish rescued from the land-locked sloughs and bayous of the Mississippi and Missouri rivers. The Commissioner had previously made a similar recommendation and this was repeated two years later.[248]

The purchase of a fish-car by the State was also urged in the report of a joint committee of investigation of the hatchery appointed under authority of a concurrent resolution of the Twenty-sixth General Assembly, providing for visiting committees for the various State institutions. The report spoke favorably of the work being carried on at the hatchery, adding that an examination of the Commissioner's report showed that "people from all parts of the state have been quite generously supplied with the various kinds of fish for stocking the various streams." The legislature, however, failed to act upon these recommendations and a

248 *Journal of the House of Representatives*, 1894, pp. 244–246; *Report of the State Fish Commission of Iowa*, 1892-1893, p. 5, 1894-1895, pp. 3, 4.

fish-car was finally purchased from the general appropriation made for the culture work.[249]

The main achievement of the Twenty-sixth General Assembly with respect to fish culture was the enactment of a law concerning Spirit Lake and the Okoboji Lakes — Iowa's "Great Lakes". "Spirit and Okoboji Lakes", the act began, "are hereby declared to be public, navigable waters, and their preservation and improvement [among other things] . . . . for the culture of fish therein, are hereby declared to be matters of public concern and importance." For the accomplishment of this purpose the act empowered the Fish Commissioner to proceed with the construction of a dam which would keep the water in the lakes "at ordinary high water mark", and to construct a screen at the top of the dam such as would prevent the escape of the fish from the lakes. The act also authorized the Commissioner to make whatever use of the lakes as would encourage the propagation of the fish in them with a view to the promotion of the work of the hatchery, the chief object of which was to supply the public waters of the State with fish.[250]

The Twenty-sixth General Assembly did not, however, as the Commissioner had hoped, appropriate a larger amount for pisciculture than the $6000 voted by the preceding General Assembly, although the Commissioner had pointed out that Iowa's appropriation for fish culture compared unfavorably with that of the neighboring States of Missouri, Illinois, Minnesota, and Wisconsin, in which States the biennial appropriations ranged from $16,000 to $40,000.[251]

[249] *Journal of the House of Representatives,* 1896, pp. 226, 229; *Biennial Report of the State Fish Commission of Iowa,* 1896-1897, p. 8.

[250] *Laws of Iowa,* 1896, Ch. 120.

[251] *Laws of Iowa,* 1894, Ch. 153, 1896, Ch. 148; *Biennial Report of the State Fish Commission of Iowa,* 1894-1895, p. 6.

At the next session of the legislature, however, the appropriation was increased to $8000 exclusive of $1000 for the payment of deputies and the protection of game. Two years later the amount set aside by the legislature for the propagation, gathering, and distribution of fish was $13,000. The Twenty-ninth General Assembly, however, probably inadvertently, failed to make any appropriation for fish propagation whatever, with the result that it was necessary to abandon temporarily the Mississippi River fish rescue work, to be briefly described at the close of this chapter.[252] From then on, however, up to and including 1909, appropriations of varying amounts for fish culture were made, the legislature after 1909 assuming that the license fees paid by hunters and boundary river commercial fishermen would furnish a sufficient amount for the carrying on of fish propagation and distribution.[253]

At its extra session for the purpose of revising and codifying the laws, the Twenty-sixth General Assembly technically increased the powers of the Warden with respect to pisciculture by providing that he should have "charge and management of the state fish hatcheries" in general.[254]

GAME

The office of Fish and Game Warden was created by the Twenty-sixth General Assembly in extra session. But although the act, by specifically providing that the Warden was to have "charge and management of the state fish hatcheries", emphasized pisciculture, not a word was said concerning game propagation. Acting under his general

[252] *Laws of Iowa*, 1898, Ch. 134, 1900, Ch. 151; *Biennial Report of the State Fish and Game Warden of Iowa*, 1902-1903, p. 5.

[253] *Laws of Iowa*, 1904, Ch. 153, 1906, Ch. 178, 1907, Ch. 210, 1909, Chs. 154, Sec. 12, 155, Sec. 3.

[254] *Code of 1897*, Sec. 2539.

powers, however, the Warden in 1913 established a State Game Farm which two years later was moved to its present location just outside Des Moines.

An act providing for private game bird preserves was enacted by the Thirty-sixth General Assembly. This act permitted the raising of game birds for sale either as food or for purposes of breeding or stocking, provided that the farm on which they were raised was wholly enclosed. Chiefly for purposes of regulation, each private game preserve so established was to be licensed, the annual fee being two dollars.[255]

In 1917 a most comprehensive act was enacted conferring upon the Fish and Game Warden the power "by and with the written consent of the executive council" to establish public parks. These parks were to be established "upon the shores of lakes, streams, or other waters of the state, or at any other places which have by reason of their location become historic or which are of scientific interest, or by reason of their natural scenic beauty or location become adapted therefor". The act vested the Executive Council with the power to purchase or condemn land for the parks themselves and also for roads whereby access might be gained from the highways into the parks.

To promote the purpose of the act, provision was made for donations of private lands, the erection of dams across streams or at the outlets of lakes, and the regulating of the general public use of the parks. Control over these matters was vested either in the Warden or the Executive Council, or in both.

The act further provided for appointment by the Executive Council of three persons who, with the Curator of the Historical Department, were to constitute a Board of Con-

[255] *Laws of Iowa*, 1915, Ch. 293.

servation. The duties of this board were to "investigate places in Iowa, valuable as objects of natural history, forest reserves, as archaeology and geology, and investigate the means of promoting forestry and maintaining and preserving animal and bird life in this state and furnish such information to the executive council for the conservation of the natural resources of the state, from time to time, and said recommendations shall be printed in such numbers as the council shall authorize, and shall be furnished each member of the succeeding general assembly." The duties of this board were purely advisory.

Finally the act carried an outright appropriation of fifty thousand dollars from the fish and game protection fund, and provision was made for a like appropriation annually thereafter, provided that such a sum did not exceed one-half of the total annual receipts of the fund.[256]

Two years later, however, the act concerning public parks was so amended as to transfer to the Board of Conservation the powers conferred by the original act upon the Fish and Game Warden. The amendatory act repealed the clause appropriating fifty thousand dollars annually from the fish and game protection fund for the establishment and maintenance of the parks, but provided that, in addition to an annual appropriation of one hundred thousand dollars from the State treasury, there was to be appropriated "out of the fish and game protection fund any portion thereof which is in the judgment of the executive council unnecessary for the support and maintenance of the fish and game department". Thus the funds of the fish and game department might be drawn upon for the support of the State parks, over which the department was given no control.[257]

256 *Laws of Iowa*, 1917, Ch. 236.

257 *Laws of Iowa*, 1919, Ch. 368.

The powers of the Board of Conservation were further increased by an act of the Thirty-ninth General Assembly, the provisions of which among other things authorized the Board to "take control and management of all meandered streams and lakes belonging to the state for park purposes, the jurisdiction over which has not otherwise been conferred by law."[258]

By action of the Fortieth General Assembly the membership of the Board of Conservation was increased to five members, the Curator of the Historical Department no longer being ex officio a member. In certain minor particulars the powers of the Board were increased. In like manner the Fortieth General Assembly in extra session amplified in certain details the powers of the Board of Conservation.[259]

By an act of the Forty-first General Assembly the Fish and Game Warden was authorized to establish game preserves on any land set apart as a park by the Board of Conservation or on any other land of the State suitable for such a purpose. Shooting and trapping on the land so set apart is forbidden, but the Warden is authorized to provide for the killing or trapping of predatory animals and birds thereon. Due notice of the establishment of such refuges is to be given by the Warden through publication and by the posting of notices near the areas affected.[260]

Another very important law of the Forty-first General Assembly pledges the coöperation of Iowa in the establishment of the "Upper Mississippi River Wild Life and Fish Refuge", in accordance with an act of Congress approved on June 7, 1924. The object of the congressional act is to

[258] *Laws of Iowa*, 1921, Ch. 135, Sec. 3.

[259] *Laws of Iowa*, 1923, Ch. 33; *Code of 1924*, Secs. 1803–1811.

[260] *Laws of Iowa*, 1925, Ch. 32.

set apart, under Federal supervision, some 345,000 acres of land on either side of the Mississippi River which, in conjunction with the river itself, will serve as a haven for the wild creatures of field and stream. The enabling act passed by the General Assembly of Iowa grants to the Federal government all public lands of Iowa which are "subject to overflow and not used for agricultural purposes or salvaging stations" so long as the United States uses the land as a refuge for wild-life. For the same purpose the acquisition by the Federal government of private lands in Iowa's jurisdiction is also granted, provided the acquisition "be first approved by the state board of conservation, by the state game warden of this state, and the executive council" and provided also that "the states of Illinois, Wisconsin, and Minnesota grant a like consent." All these States, by the passage of enabling acts similar to Iowa's, have given this consent.[261]

It may not be out of place, in bringing this chapter to a close, to reiterate what was said in the beginning: the extent to which the propagation of fish and game is promoted by the Warden and his subordinates is not substantially indicated by the scope of the legislation in this particular field. Particularly is this true at the present time when so much attention is being given by the department to the propagation and preservation of both fish and game by positive methods.

As an illustration of this there may be cited the fish rescue work which is being carried on in the vicinity of Lansing and Sabula on the Mississippi River. Like all rivers the Mississippi is highest in the spring of the year, spreading over vast areas outside its bed. As the water

[261] *Laws of Iowa*, 1925, Ch. 1; an article entitled *A Sportsman's Paradise — The Upper Mississippi Wild Life and Fish Refuge* in *Outdoor America*, August, 1925, pp. 34, 35.

lowers in the late spring, lakes are formed throughout this area, and as the warm weather approaches the steadily subsiding river tends to cut off the water supply from these lakes. As a result their waters become stagnant, dry up, or freeze in winter, and the fish in them, in large measure, perish. Through the work of the Fish and Game Warden and his subordinates many of these fish are rescued, the majority of them being returned to the main channel of the river, but a goodly number are sent to numerous rivers and lakes of inland Iowa, there to propagate their kind. Steel tanks are used for the detention of the rescued fish, and their distribution is effected chiefly through the use of a specially constructed railroad car.[262]

Yet there is scarcely a word in any of the permanent fish legislation of Iowa concerning this work — of enormous potential importance in the maintenance in Iowa's waters of a reasonable abundance of its fish. Nor is it necessary or expedient, as pointed out in the beginning of this chapter, that there be legislation directly concerning it. The amount of legislation in the realm of fish and game propagation is no criterion of the extent to which this particular phase of our subject has received attention in the administration of the general laws pertaining to it.

VI

CONCLUSION

In the molding of the fish and game legislation of the State of Iowa three factors have been instrumental. The first of these has been the advice of the Fish and Game Warden. Again and again throughout the course of this review it has been pointed out that a law was enacted "in

262 *Biennial Report of the Fish and Game Warden of Iowa*, 1922-1924, p. 9.

accordance with the recommendation of the Warden''. In some cases but a single advocacy of a desired change in the fish and game laws has been necessary to effect that change. In others — a notable instance of which was the resident hunters' licensing system — a campaign of education has been necessary during which the same recommendations were made by the Warden over and over again. But apparently no legislation for which the Warden has fought consistently, patiently, and untiringly has failed of ultimate enactment.

This is as it should have been. The regulation of the activities of the people with respect to fish and game is a technical problem, for the proper solution of which the advice and counsel of the one to whom has been intrusted the administering of the wild-life laws is essential. Statute books, Federal and State, are replete with laws which can not and, in numerous cases, should not be enforced. This condition has been due, in part, to a legislative policy which has not taken sufficient account of the opinions of the law's administrators. To-day, more than formerly, the importance of the legislative function of governmental administrative officers is recognized, and it may properly be expected that the General Assembly will be even more prone than previously to act upon the recommendations of the Fish and Game Warden concerning fish and game legislation.

A second factor in the molding of the fish and game legislation of Iowa has been the influence exerted by the constituents of the legislators. Whenever the people, through petitions, have strongly urged the enactment of a certain act, that law has almost invariably been passed. Indeed instances have been cited of individual legislators or of committees who have frankly declared that their action

with respect to a particular bill was prompted by the desires of their constituents. That such is the case should be encouraging to the every-day citizen who is inclined to underestimate his potential powers in framing indirectly the legislation under which he is governed. If the petition is an effective agency in bringing about desired legislation in the sphere of fish and game, there would appear to be no reason why it should not be equally effective in securing needed legislation in other fields of legislative activity.

The third of the factors responsible for the framing of the fish and game legislation of Iowa may be said to have been the discretion exercised by the legislature, independent of the pressure brought to bear upon their membership through the two influences which have just been considered. In the enactment of legislation there are invariably conflicting points of view with respect to the policy to be followed. Nor has the sphere of fish and game been an exception. At one extreme have been those who, interested only in the slaughter of Iowa's wild-life, have desired a legislative policy of laissez-faire — of "hands off". There have been people, on the other hand, who, unable or unwilling to appreciate the point of view of the sportsman, have urged the most drastic legislation for the protection of Iowa's wild-life, particularly game.

It is to the credit of the legislature that, in general, a course midway between these two extremes has been followed. The legislature has realized that conservation and provision for a limited taking of fish and game are not necessarily incompatible. For fishing and hunting have ever been regarded as healthful and legitimate recreations, and fish and game as wholesome and appetizing food. Yet obviously only through a policy of reasonable conservation will there continue to be fish and game to furnish sport for

the fisher and hunter and food for the family larder. Nor are these the most important reasons why the fish and game of the State should be conserved. Indeed, no group is more alive to the necessity for the reasonable regulation of fishing and hunting than are the sportsmen of to-day. The Isaac Walton League, nominally an association of fishers and hunters but virtually an organization of conservationists, is a case in point.

There is, indeed, one circumstance which renders a legislative policy of reasonable conservation difficult with respect to fish and game. This is the lack of uniformity in the distribution throughout the State of the various kinds of wild-life. Thus a law regulating the fishing or hunting of a certain variety of fish or game may be too strict with respect to those parts of the State where the particular variety is abundant, and not sufficiently rigid in those sections where it is scarce. Under such conditions, it is difficult to secure respect for the law since the people of each section will judge the legislation solely on the grounds of its expediency so far as that particular locality is concerned. The way out of this difficulty was indicated by the legislature itself in the law relative to the ring-neck pheasant enacted at the most recent session of the General Assembly. This act, it will be recalled, vests discretionary power in the Warden by giving him the right, under certain conditions, to grant or withhold protection with respect to the ring-neck pheasant. It may appear that a general extension of such discretionary power will be needful for the reasonable conservation of the fish and game in the various sections of the relatively large State of Iowa.

And while we may expect further limitations upon the activities of the sportsman as time goes on, it is probable that the legislature will harbor no delusion that the strict-

est protective laws will preserve intact Iowa's wild-life. "You may blame the hunter all you will", said a speaker before the State Conservation Association in 1924, "and you may pass all the game laws you can write, but you will not have as much game in Iowa next year as you have this."[263] An observation somewhat similar might be made concerning fish. Why is this? It is simply due to the inevitable transformation of what Stewart Edward White would call "the silent places" of Iowa into habitable regions. The history of all mankind has been marked by an ever constant adaptation to human needs of the resources of nature. We call it "progress", but unfortunately the maintenance of the *status quo* of the creatures of field and stream has never been compatible with this progress.

And so in Iowa the timber has been cut, the swamps have been drained, the streams have been straightened — all in order that more corn may grow and more hogs may thrive. Is this justifiable? Certainly, when the benefits resulting from such transformation are in keeping with the price that has been paid, but not so when the nesting places of our birds are destroyed, the haunts of our fish drained, the retreats of our wild animals obliterated — only to provide a little more farm land of a quality which will not, in the long run, yield returns commensurate with the cost.

The reader may ask what has all this to do with fish and game legislation in Iowa? Simply this: so far as feasible the effects of the plow, the axe, and the drain tile must be counteracted by the establishment of fish preserves and game sanctuaries. Exercising its power of eminent domain, the State must reclaim those few remaining wild

[263] From an address by Arthur Goshorn on March 7, 1924, before the Iowa State Conservation Association, as printed in the *Winterset News* for March 13, 1924.

areas which, if left in private hands, might in the name of civilization be ruined as refuges for game and as habitats for fish. And there will be also in order stricter regulations governing the reclamation of private property.

The State of Iowa is justly proud of its position agriculturally: it is said on good authority that Iowa in the near future will double her production of live-stock.[264] But growth and expansion in this direction, if a proper policy is followed, need not be accompanied by the virtual disappearance of the State's wild-life. And the formulation of this policy rests in the hands of the legislators of Iowa.

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[264] See the address referred to in the preceding reference.