

No. 203

**FISHING LICENSE—YELLOWSTONE NATIONAL
PARK, boundaries of**

Held: It is necessary for anyone fishing in the portion of the Yellowstone River which is outside of the boundaries of Yellowstone National Park, as such boundaries are defined by the Acts of Congress, to secure a fishing license from the State of Montana.

August 9, 1941.

Dr. John S. McFarland
State Game Warden
Montana Fish and Game Commission
Helena, Montana

Dear Dr. McFarland:

Your office has submitted to us the following proposition:

"The question has arisen concerning the fishing on the south side of the Yellowstone River, west of Gardiner to Reese Creek.

"The United States Commissioner's office at Mammoth in Yellowstone Park ruled that the boundary of Yellowstone Park followed the waters edge along the river. This leaves the river in Montana and would come under the jurisdiction of the Fish and Game Commission.

"We ask, would it be necessary to have a state fishing license to fish the south side of the river? This would be standing in Yellowstone Park and fishing in Montana.

"The Park advises that the catch from the river would have to conform with the Park limit and that it would be impossible to fish at all after the Park season closes.

"Please let us have a ruling on this question."

Section 21 of Title 16, U. S. C. A., defines the northern boundary of Yellowstone Park as follows:

". . . commencing at the junction of Gardiner's River, with the Yellowstone River, and running east to the meridian passing ten miles to the eastward of the most eastern point of Yellowstone Lake; . . . thence west along said parallel to the meridian passing fifteen miles west of the most western point of Madison Lake; thence north along said meridian to the latitude of the junction of the Yellowstone and Gardiner's Rivers; thence east to the place of beginning, . . ."

Section 21a of Title 16, U. S. C. A., defines the revised north boundary as follows:

"Beginning on the present north boundary line of Yellowstone National Park at its intersection with the hydrographic divide immediately north of Pebble Creek, approximately at park boundary monument 29 east; thence following said divide around the head of the drainage of Pebble Creek to its intersection with the present east boundary line of Yellowstone National Park, at a point near park boundary monument 54 north; . . ."

"Beginning on the present west boundary line of Yellowstone National Park at its intersection with the left bank of Gallatin River between park monuments 45 and 46 north; thence northwesterly along said bank to a point opposite the hydrographic divide between Daly and Tepee Creeks; thence northeasterly across the Gallatin River and along said divide, around the headwaters of Daly, Black Butte, Specimen, and Fan Creeks, to the intersection of said divide with the present north boundary line of Yellowstone National Park, at a point near Park boundary monument 11 west."

Section 22 of Title 16, U. S. C. A., provides the Yellowstone National Park shall be under the exclusive control of the Secretary of Interior and he shall provide against the wanton destruction of the fish and game found within the park.

Section 24 of Title 16, U. S. C. A., provides the Yellowstone National Park—as its boundaries are now defined or as they may be hereafter defined or extended—shall be under the sole and exclusive jurisdiction of the United States.

All of the foregoing laws were passed by the Congress of the United States under the authority granted to that Congress by the Constitution of the United States.

I have discussed the matter of the boundary with Mr. Tice, of the State Engineer's office, and he checked the maps in the United States Land Office. It is his opinion the middle of the river constitutes the boundary

line of the Park. This, however, is only his unofficial opinion and I believe you should be guided by the opinion of the United States Commissioner's Office at Mammoth.

It is therefore my opinion that, if the south side of the Yellowstone River west of Gardiner above Reese Creek is the actual boundary of the park as defined by Congress, then the river itself lies within the State of Montana and is not within the jurisdiction of the Secretary of Interior. If such is the case it would then be necessary to have a fishing license from the State of Montana to fish in the Yellowstone River any place outside of the boundaries of Yellowstone National Park.

Also if the south side of Yellowstone River west of Gardiner above Reese Creek (that is, the bank of the river) is the actual boundary of the park as defined by Congress, then of course the bank of the river is within Yellowstone National Park and under the jurisdiction of the Secretary of Interior, and consequently such Secretary of Interior can make a regulation fixing the limit of fish to be in the possession of any person within Yellowstone National Park.

In other words, if the bank of the river is the actual boundary line, a person standing on the bank would be in the Park and subject to the jurisdiction of the Park, insofar as fish in his possession (after they are caught) are concerned. He could not fish in the river without a Montana license because the river is in Montana, and under the jurisdiction of Montana.

Sincerely yours,

JOHN W. BONNER
Attorney General