

MEMORANDUM

TO:

FROM: William Talley, University of Miami School of Law Human Rights Clinic, under the supervision of Denisse Cordova Montes

DATE: May 9, 2021

RE: Outline of issues re: Maine Dept. of Fisheries concerns over right to food amendment

This memo will discuss the potential legal issues raised by the use of the word “poaching” in LD 95, Maine’s proposed constitutional right to food. The proposed amendment reads:

“Rights to food and food sovereignty. All individuals have a natural, inherent and unalienable right to food, including the right to save and exchange seeds and the right to grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health and well-being, as long as an individual does not commit trespassing, theft, **poaching** or other abuses of private property rights, public lands or natural resources in the harvesting, production or acquisition of food.”

Following the bill’s passage in Maine’s Agriculture, Conservation, and Forestry (ACF) legislative committee, the committee recast its vote. During this process, some committee members raised new concerns about this language, especially the statutory definition of the word “poaching.” These members worried that the word was too vague and could invite unacceptable interpretations, banning some illegal hunting or fishing while leaving other illegal activities untouched.

I. Questions presented

1. What does the word “poaching” mean as it stands in LD 95?
2. What interpretations of the amendment, its protections, and its limitations might the word “poaching” invite?

II. What does the word “poaching” mean as it stands in LD 95?

A. Definitions

Merriam-Webster’s Dictionary has two definitions for “poach”: to trespass for the purpose of stealing game, or to take game or fish by illegal methods.¹ Legal dictionaries define the word as the illegal taking or killing of fish or game on another’s land.² All three definitions require some degree of illegality, either from trespass, theft, or illegal taking of fish or game. Because LD 95 already forbids trespass and theft, this memo will examine how Maine state law treats the illegal taking of fish or game.

The word “poach” does not appear in any Maine statute; however, several state statutes forbid hunting and fishing in protected areas, against protected animal species, or without a license. For instance, one statute regulates the specific hunting methods for moose.³ Another statute provides the general licensing requirements for hunting in Maine.⁴

Federal statutes do not clearly define poaching, either. The U.S. Code mentions poaching in 15 separate statutes, but none of these statutes explicitly define the term. The most helpful statutes seem to relate “poaching” to “wildlife trafficking,” or the “illegal taking of protected or managed species and the illegal trade in wildlife and their related parts and products.”⁵ But no law in the U.S. Code sets out a definition specifically for the word “poaching.”

B. Illegal hunting and fishing

Title 7 of the Maine code, which contains most of the provisions related to food—and shares its name with Maine’s ACF committee—does not explicitly discuss illegal hunting and fishing. The Animal Welfare Act in particular works in conjunction with statutes against animal cruelty and does not address hunting.⁶ The majority of hunting and fishing-related statutes appear in Title 12, “Conservation,” which contains regulations on protected lands, animals, and plants and establishes basic requirements for hunting, fishing, and trapping. Though the Maine legislature has repealed a vast swath of Title 12, the remaining provisions regulate marine resources, license suspension, hunting under the influence, hunting seasons, trapping, fishing seasons, and so on.

The Commissioner of Marine Resources has the power to create management plans for marine resources in the interests of long-term viability of fisheries and the health of the state.⁷ Pursuant to

¹ *Poach*, Merriam-Webster’s Dictionary, <https://www.merriam-webster.com/dictionary/poach>.

² *Poaching*, Black’s Law Dictionary, (5th Ed. 2016).

³ ME. REV. STAT. tit. 12, § 11601, “Unlawful Hunting of Moose.”

⁴ *Id.* at § 11109, “Licenses and Fees.”

⁵ Eliminate, Neutralize, and Disrupt Wildlife Trafficking Act of 2016, 16 U.S.C. § 7601; *see also* Ex. Ord. No. 13648, “Combating Wildlife Trafficking” (Jul. 1, 2013) (defining “wildlife trafficking” as the “poaching of protected species and the illegal trade in wildlife and their derivative parts and products”).

⁶ ME. REV. STAT. tit. 7, §§ 3901–3910-B, “Animal Welfare Act”; ME. REV. STAT. tit. 7, §§ 4011–4020, “Cruelty to Animals.” A significant portion of the Animal Welfare Act has been repealed by the Maine legislature. The remaining portions discuss the Act’s purpose, enforcement, and the Animal Welfare Advisory Council. None bear any relation to poaching.

⁷ ME. REV. STAT. tit. 12, § 6171, “Conservation and Propagation of Marine Organisms.”

this power, she may adopt rules limiting the ability of people to take those resources.⁸ This power results in a licensing scheme for marine resources, similar to the licensing schemes for fishing and hunting, which can incur penalties on individuals who fail to produce their licenses at the request of an officer.⁹

Maine statutes focus heavily on hunting and the licensing and penalty regime associated with it. Prohibited activities include hunting during closed season, possessing wild game while criminally trespassing, hunting on a state game farm, wasting game, etc.¹⁰ Each of these provisions share a common theme of unlawful taking and/or trespassing. This conforms with the legal definition of poaching as illegal taking or killing of fish or game on another's land.¹¹ As for prohibited hunting and fishing on one's own land, the poaching definition provided by non-legal dictionaries—taking game or fish by unlawful methods—seems to apply. None of these definitions have legal force, but they appear to map well onto Maine's statutory framework.

III. What interpretations of the amendment, its protections, and its limitations might the word “poaching” invite?

A. Context of the term

LD 95 guarantees a right to food but conditions it on legality, stating that individuals may enjoy a right to food “as long as an individual does not commit trespassing, theft, **poaching** or other abuses of private property rights, public lands or natural resources in the harvesting, production or acquisition of food.” The term “poaching” comes as part of a list of forbidden behaviors, and the phrase “or other abuses” seems to imply that trespassing, theft, and poaching are themselves abuses of private property rights, public lands, or natural resources.

B. Interpretations

This instance of the word “poaching” would be the first in Maine state law. However, Maine law addresses illegal hunting, fishing, and trapping extensively.¹² In addition, LD 95's list of exceptions to the right to food is not exclusive; the amendment lists poaching only as an example of banned activities, not as one of a few specific exceptions. The broadness of the term “other abuses” will allow the state legislature to reasonably construe the amendment against all forms of illegal hunting and fishing. The dictionary definitions of the word “poaching” generally supports such a construction of the proposed amendment.

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Id.

⁹ *Id.* at § 6305, “Possession of License, Photo Identification and Transaction Card.”

¹⁰ *Id.* at §§ 11201–11228, “General Unlawful Acts Pertaining to Hunting.” Several statutes follow, §§ 11251–12001, which apply to specific game and hunting methods.

¹¹ Black's Law Dictionary, *supra* note 2.

¹² *See* discussion on prohibited hunting, fishing, and trapping and licensing regimes above.

Average citizens will also need to interpret the amendment, however. For this, it may be more appropriate to depend on non-legal dictionaries and common understandings of the term “poaching.” Based on these sources, “poaching” appears to refer to any illegal taking or killing of an animal on another’s property or the illegal taking of valuable parts of an animal.¹³ Because the amendment expressly forbids “trespass,” average citizens will understand the amendment to prohibit hunting or fishing on another’s land.

Importantly, LD 95 provides this list of exceptions to the right to *food*. While the word “poaching” on its own might suggest taking valuable parts of animals for sport, the proposed amendment implies bans poaching “in the harvesting, production or acquisition of food.” Even if one kills fish or game in order to obtain food, not for valuable animal parts, they might still be committing the offense of poaching. This context adds important meaning to “poaching” and would inform any reasonable reading of the amendment. If an individual tries to obtain food and hunts or fishes illegally, she might find herself outside the scope of the human right to food under LD 95.

IV. Conclusion

Based on common understandings of the term “poaching” and corresponding legal definitions, and considering the context and structure of the proposed constitutional right to food in LD 95, the amendment bans any illegal hunting or fishing. This includes hunting or fishing during trespass, violations of Maine state law regarding licensing, seasons, protected lands and species, and so on. Research into Maine statutes, federal codes, and definitions of the term “poaching”—as well as the amendment’s non-exhaustive list of prohibited conduct—revealed no vulnerabilities that might allow an average Mainer to understand the amendment as allowing any form of illegal hunting or fishing. LD 95’s language does not expose it to unacceptable interpretations.

¹³ Merriam-Webster’s Dictionary, *supra* note 1; *Poach*, Cambridge Dictionary (American), <https://dictionary.cambridge.org/dictionary/english/poach>.