

MAINE STATE LEGISLATURE

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August 12, 1905

To A. R. Nickerson, Commissioner of Sea and Shore Fisheries
Re: Salmon Nets

. . . You say that you have written Fish Warden Sullivan that you find no statutes which provide for the seizure of salmon nets. A careful re-reading of Mr. Sullivan's letter does not disclose that the nets in question could be properly called salmon nets. He merely says, "I found two set nets at Hampden about five o'clock in the morning." . . .

In Chapter 41, Section 46, I find the following provision:

"No weir, hedge, set net or any other contrivance for the capture of fish, which is stationary while in use, shall extend into more than two feet of water at ordinary low water, under a penalty of not more than \$100. or less than \$50., a forfeiture of all apparatus and material so unlawfully used."

You will observe, if you have the statutes before you that this does not apply to any portion of Penobscot River, bay or tributaries.

In the same Chapter, Section 38, there is a regulation of purse and drag seines in certain waters of the coast, and among other places where such seines are not to be used are the following: "

"In all bays, inlets and harbors east of the west shore of the Penobscot bay."

This applies to purse and drag seines only and not to set nets, and, moreover, we could hardly say that Hampden was on Penobscot Bay. It is too far up the river for that. . .

The only possible place that I can see where you might hold him is by virtue of Section 40, which says,

"No person shall set any net or seine within five hundred feet of the mouth of any weir under penalty of fifty dollars for each offense."

There is nothing in this case, however, which shows that the net was within five hundred feet of the mouth of any weir, neither does the statute provide for the confiscation of the net.

One other provision of the statute, however, I have discovered, and it is possible that your warden had this provision in mind. He says that he came down over the line on the 16th of July. Now the 16th was Sunday, and Section 43 provides a weekly close time from sunrise on Saturday on Saturday to sunrise on Monday between the first day of April and the fifteenth day of July, and that during

this weekly close time all seins, nets and other movable apparatus shall be removed from the water; but the trouble in this case is that the statute says that this section does not apply to the Penobscot River. In any event, the weekly close time was only from the first day of April to the fifteenth of July, and the offense, if there were any, is on the morning of the 16th.

So, I have looked the matter over with some care and I am frank to say that there is only one other possible opportunity to punish the owner of the net, providing you can find him. I refer to Section 43, which declares a close time on salmon from the fifteenth of July to the first day of April following. Now this net was set on the 16th, which was in close time for salmon, but until the salmon had been caught, I do not see how there is any guilty party. In this case also there is no authority for taking the net; the only authority given is to punish the offender by a fine.

I am forced to the conclusion that I have been unable to find any law which applies to the case at bar and I am almost afeaid that the owner of the net may be able to successfully maintain a suit against Mr. Sullivan, either in trover or replevin as he chooses to bring it. If I can find any further provision, or if you discover anything which seems to head this case, I shall be glad to confer with you about it.

Warren C. Philbrook
Attorney General