

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

October 3, 1919

To Hon. Carl E. Milliken, Governor of Maine
Re: Enforcement of Sea and Shore Fisheries Rules

We have your inquiry relative to the effect of the absence of any penalty fixed by statute for the violation of rules and regulations adopted by the Sea and Shore Fisheries Commission. We have examined very carefully the course of recent legislation governing this subject matter, and while the fact that no specific provision was made introduces an element of uncertainty, we cannot believe that the Department is helpless.

The last sentence of Section 3 of Chapter 293 of the Public Laws of 1917, provides as follows:

"Rules and regulations so made, and close time so declared shall be held to take precedence over any then existing provisions of statute inconsistent therewith."

This provision was obviously to give these rules and regulations the force of law, and undoubtedly had that effect. The authority of the legislature to delegate its power in this connection was long ago settled. In other words, when the Commission establishes any reasonable regulation which does not violate any constitutional requirement, that regulation is for all practical purposes as much a law as if expressly incorporated in a statute.

Section 1 of Chapter 137 of the Revised Statutes (of 1916) provides that when no punishment is provided by statute a person convicted of an offence shall be imprisoned for not less than one year or fined not exceeding \$500., and other provisions of law give jurisdiction to particular courts over offences under this legislation. In our judgment, a violation of a proper regulation of the Commission is an "offence" against the law, and subjects the offender to a penalty. We must admit, however, that the question is open to some doubt, and we are unable to find any specific decision upon the point.

The lobster law gives authority to seize traps, etc., used in violation of law, and in our judgment traps which are used in violation of a valid regulation of the Commission are subject to seizure in conformity with law.

The question of the revocation of license depends upon whether or not it is possible to convict the fisherman of any offence, because I understand from a reading of the law that the only authority to revoke a license is upon such conviction. If we are correct in our impression that a conviction can be obtained, then the license may be revoked; otherwise, not.

We suggest that the only way to be certain upon this point is to institute a test case.

Fred F. Lawrence
Deputy Attorney General