

MAINE STATE LEGISLATURE

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See File Sea & Shore Fisheries

May 26, 1937

Honorable Roy L. Fernald
Winterport, Maine

Dear Roy:

Section 27 of Chapter 2, P. L. 1933, which is a revision of the Sea and Shore Fisheries laws, is somewhat obscure but it is our opinion that the words "except by the ordinary mode of angling with single hook and line or artificial flies" apply only to the St. Croix River in Calais above Ferry Point bridge and between the first days of April and November; and that this provision cannot be read as a part of the same section applying to the Penobscot River between the mouth of the Kenduskeag Stream and the Waterworks Dam at Treat's Falls and that between these last named points no salmon, shad or other migratory fish shall be taken or fished for.

You will note that the section starts off by referring to salmon, shad or other migratory fish, and that the provision relative to the St. Croix River refers only to salmon. Our feeling is that no salmon, shad or other migratory fish can be taken or fished for at any time or by any mode in the Penobscot River between the points mentioned.

You may be interested in tracing the history of this legislation, and you will find the first enactment on the subject in Section 9, Chapter 75, P. L. 1878. This was amended by Chapter 143 of the Laws of 1879. In the 1883 Revision of the Statutes, Section 41 of Chapter 40 puts the exception as to angling with a single hook and line, or with artificial flies directly after the provision relative to the Augusta Highway Bridge over the Kennebec River. In Chapter 180, P. L. 1915, the restrictions relative to the St. Croix River are inserted, and the exception as to fishing with hook and line is placed after the limitations pertaining to the St. Croix River for the first time, and you will find that same wording carried down in the various subsequent revisions.

In Section 27 of Chapter 2, P. L. 1933, near the end of the section, a provision is inserted permitting the taking of salmon,

Honorable Roy L. Fernald
Winterport, Maine.

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shad and alewives between the Augusta Highway Bridge and the Augusta Dam by fly fishing only between certain specified dates, which would seem to indicate that, but for that last provision, fishing was absolutely prohibited in that part of the Kennebec River by the prior provision of the section, and that none of the places except the St. Croix River were affected by the exception as to fishing with hook and line and artificial flies for salmon.

If you take the position that the provisions as to the Kennebec River at Augusta were affected by the exception occurring after the prohibition against fishing in the St. Croix River then the subsequent part of the section permitting fly fishing in the Kennebec River at Augusta has no application and makes two inconsistent provisions in the same section.

Under the provisions of Chapter 127, P. L. 1931, enacted prior to the passage of Chapter 2 of the Laws of 1933, the situation in the limited section of the river in which you are interested apparently is not affected.

If you disagree with any of these conclusions I should be very pleased to have you write me.

I trust you are fully recovered from the affects of the last Session and shall enjoy seeing you whenever you happen to be in Augusta.

With kindest personal regards,

Very truly yours,

Franz U. Burkett
Attorney General

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