

MAINE STATE LEGISLATURE

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26

October 4, 1950

To Richard E. Reed, Commissioner of Sea and Shore Fisheries
Re: Herring Fishing in St. Croix River

Your inquiry of September 25th last is whether seiners, other than weir owners, may lawfully fish for herring in the St. Croix River.

P&SL 1901, Chapter 449, promulgated by the Commissioner of Sea and Shore Fisheries as a Rule and Regulation by virtue of a legislative directive contained in Chapter 3, Section III, Laws of 1933, expressly prohibits "the driving and seining of herring, in any manner, except the seining of weirs, in the St. Croix River, between the breakwater at Calais and Todd's Head, at Eastport." This statute, or rule or regulation, clearly and unequivocally forbids any seining for herring by any persons other than weir owners in this area.

In passing on this question, it is proper to consider whether Resolves 1941, Chapter 125, (Handbook, page 104), promulgated as a rule and regulation by virtue of Chapter 125, P.L. 1941, in any way affects the strict prohibition contained in the preceding rule above quoted. Although this later rule permits the use of seines for the purpose of catching herring in all bays, inlets, weirs and harbors east of the west shore of Penobscot bay (St. Croix River included) for stated periods in apparent conflict with the earlier rule specially applicable to the St. Croix River, it, nevertheless, preserves the provisions of the earlier statute by providing that seines "shall not be used in any waters in which their use is prohibited by special or general law."

Therefore, since the provisions of P&SL 1901, Chapter 499 (now a rule and regulation) remain unaffected by the provisions of the later statute, Resolves 1941, Chapter 125 (now rule and regulation No. 127) for the reasons above stated, it is my opinion that all persons are prohibited from seining for herring in the St. Croix River, except the owners of weirs in said area.

Nunzi F. Napolitano
Assistant Attorney General