

MAINE STATE LEGISLATURE

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March 17, 1955

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Smelts

We have your memo of March 8, 1955, which reads as follows:

"Section 63, Chapter 37, of the Revised Statutes of 1954 provides that 'All persons dealing in live bait shall be licensed to do so by the commissioner and the fee therefor shall be \$5.00 each calendar year.'

"Ice fishermen are catching smelts on Snow Pond and selling them to other fishermen. They do not have an established place of business, and there is no other statute prohibiting the sale of smelts.

"Are they dealing in live bait within the intent of that section?"

The last paragraph of Section 63 of Chapter 37 provides:

"Persons having a bait dealer's license under the provisions of this section may take smelts in accordance with the provisions of section 55, and a licensed bait dealer may possess more than 4 quarts of bait at any time, providing the taking is legal."

The last sentence of Section 55 of Chapter 37 provides:

"No person shall take, kill, catch or have in possession more than 4 quarts of smelts in any one day."

If the fishermen referred to in your memo have in their possession more than 4 quarts of smelt bait, then they are either violating Section 55, above quoted, or they should be licensed bait dealers. The case would appear to turn upon whether the fisherman takes, kills, catches, or has in his possession more than 4 quarts of smelts in any one day. If he has, then he has violated Section 55 unless he has a license as required under Section 63.

James Glynn Frost
Deputy Attorney General

Jgf/c