

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

March 13, 1980

Honorable Harry L. Vose
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Vose:

You have inquired as to the applicability of municipal shellfish conservation ordinances to polluted, closed areas that have been conditionally opened to depuration plant harvesting by the Commissioner of Marine Resources. A review of the relevant statutes reveals that these areas are not subject to local municipal control, but instead are directly regulated by the Commissioner.

12 M.R.S.A. § 6671(3) expressly prohibits municipal shellfish conservation ordinances from regulating areas closed by regulation of the Commissioner of Marine Resources. Although 12 M.R.S.A. § 6856 authorizes the Commissioner to permit certified wholesale seafood license holders "to take shellfish from closed areas for depuration," the language of the statute clearly indicates that the area remains "closed" for the purposes of 12 M.R.S.A. § 6172 (due to unacceptable pollution levels). Therefore a municipality has no authority to regulate these closed areas.

Please feel free to contact me if I can be of any further service.

Sincerely,

RICHARD S. COHEN
Attorney General

RSC/ec