

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

June 18, 1980

Representative Harry L. Vose
State House
Augusta, Maine 04333

Dear Representative Vose:

You have requested an opinion on two questions concerning Municipal Shellfish Conservation Programs:

1. Can the Commissioner of Marine Resources establish clam ordinances in the unorganized territories of Edmunds and Trescott?
2. Can the Commissioner limit the number of licenses to be sold in Edmunds and Trescott and can he offer the licenses to residents before selling to non-residents?

In response to your first question, the Commissioner of Marine Resources has no authority to adopt a "clam ordinance" on behalf of an unorganized territory. Although 12 M.R.S.A. §6671 authorizes a municipality to adopt a shellfish conservation program and ordinance, neither an unorganized territory nor the Commissioner of Marine Resources qualify as a "municipality" authorized to adopt such an ordinance. (See 12 M.R.S.A. §6671(6) and 1 M.R.S.A. §72(13)). Therefore the Commissioner may only draw upon his general regulatory powers for the conservation of the shellfish resource within the unorganized territories of Edmunds and Trescott. 12 M.R.S.A. §6171(1) and (2) enable the Commissioner of Marine Resources, with the advice and consent of the advisory council, to adopt regulations limiting the taking of organisms by restrictions pertaining to time, method, number, weight, length or location. In emergency situations, where immediate action is necessary to protect or conserve any marine organism from unusual damage or imminent depletion,


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the Commissioner may adopt such regulations according to emergency procedures. Thus the Commissioner may provide for the conservation of the shellfish resource within unorganized territories, but may not utilize the Municipal Shellfish Conservation Program framework for this purpose.

Any regulation adopted by the Commissioner must be of general application to all residents of the state. The Commissioner's regulatory powers offer no authority for the adoption of regulations containing preferences or priorities based on residency criteria for a class of Maine citizens. Therefore, any conservation regulation adopted by the Department would accord equal treatment to all Maine citizens, without special preference for the diggers of Edmunds and Trescott.

I hopethis information is helpful. Please feel free to contact us if our office can be of any further service.

Sincerely,


ELIZABETH R. BUTLER
Assistant Attorney General

ERB:njm