

Rights to the Shore: Understanding Shoreline Access

Public access to the Rhode Island shore is a right guaranteed in the state's constitution, but what does that mean? This workshop aims to give a comprehensive overview of the issues surrounding shoreline access, the 2022 legislative session and where our rights to the shore currently stand. Bring your questions!

David Prescott – South County Coastkeeper , Save the Bay

Michael Woods –New England Chapter, Backcountry Hunters and Anglers

Janet Freedman – URI Coastal Institute, Senior Fellow

Rep. Terri Cortvriend – RI House of Representatives, District 72



“Public Trust Doctrine” – The basis for Shoreline Rights

European Origins

- ~ 500 AD – Roman Civil Code of Justinian I

*“these things are communal by natural right: **the air, flowing water, the sea, and, through this, the shores of the sea.** No one, therefore, is forbidden to approach the seashore, provided that he respects habitations, monuments, and the buildings, which are not, like the sea, subject only to the law of nation.”*

- 1215 AD – Magna Carta

“All fish-weirs shall be removed from the Thames, the Medway, and throughout the whole of England, except on the sea coast”

“No bank works of any sort are to be kept up save for those that were in defense in the time of King Henry II our grandfather and in the same places and on the same terms as was customary in his time. “



“Public Trust Doctrine” – The basis for Shoreline Rights

United States Interpretation

- **Martin v. Waddell (US Supreme Court, 1842)**

*“When the Revolution took place, the people of **each state became themselves sovereign**, and in that character held the **absolute right to all their navigable waters and the soils under them for their own common use**, subject only to the rights since surrendered by the Constitution to the general government.”*

- **Illinois Central Railroad Co. v. Illinois (US Supreme Court, 1892)**

“It is the settled law of this country that the ownership of and dominion and sovereignty over lands covered by tidewaters, within the limits of the several states, belong to the respective states within which they are found, with the consequent right to use or dispose of any portion thereof, when that can be done without substantial impairment of the interest of the public in the waters”

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United States Interpretation (Continued)

- **Shively v. Bowlby (US Supreme Court, 1894)**

“The foregoing summary of the laws of the original states shows that there is no universal and uniform law upon the subject, but that each state has dealt with the lands under the tidewaters within its borders according to its own views of justice and policy, reserving its own control over such lands or granting rights therein to individuals or corporations, whether owners of the adjoining upland or not, as it considered for the best interests of the public.”

- **Borax Consolidated Co. v. Los Angeles (US Supreme Court, 1935)**

“The tideland extends to the high water mark, which means, not a physical mark made upon the ground by the water, but the line of high water as determined by the course of the tides.”

“in order to ascertain mean high tide line with requisite certainty in fixing the boundary of valuable tidelands, an average of 18.6 years should be determined as nearly as possible”

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Rhode Island’s History

- **Rhode Island Royal Charter of 1663**

“shall not, in any manner, hinder any of our loving subjects, whatsoever, from using and exercising the trade of fishing upon the coast of New England, in America; but that they, and every or any of them, shall have full and free power and liberty to continue and use the trade of fishing upon the said coast, in any of the seas thereunto adjoining, or any arms of the seas, or salt water, rivers and creeks, where they have been accustomed to fish”

“for the encouragement of the inhabitants of our said Colony of Providence Plantations to set upon the business of taking whales, it shall be lawful for them, or any of them, having struck whale, dubertus, or other great fish, it or them to pursue unto any part of that coast, and into any bay, river, cove, creek, or shore, belonging thereto, and it or them, upon the said coast, or in the said bay, river, cove, creek, or shore, belonging thereto, to kill and order for the best advantage”

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Rhode Island’s History (Continued)

- **Rhode Island Constitution, 1842**

Article 1, Section 17: “The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state.”

- **Allen v. Allen (RI Supreme Court, 1895)**

“The private rights which a riparian proprietor on tide water has to the shore between high and low water mark are in the nature of franchises or easements, the fee of the shore being in the State as trustee for the public”

“The State holds the legal fee of all lands below high water mark as at common law, as has been uniformly and repeatedly decided by this court”

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Rhode Island’s History (Continued)

- **Jackvony v. Powel (RI Supreme Court, 1941)**

“The question to be decided by us in this matter is that of the constitutionality of the act now before us, which, if valid, would, by adding by amendment certain language to P.L. 1939, chap. 759, give the respondent commission, without any restriction whatever, the power to erect fences of any sort on any part of the shore, i.e., the land between high and low water marks”

“The decision of this court is that public laws 1940, chap. 848, is unconstitutional and void because it is in violation of article I, section 17 of the constitution of this state.”

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Rhode Island’s History (Continued)

- **State v. Ibbison (RI Supreme Court, 1982)**

*“We concur in this analysis and apply the mean-high-tide line as the landward boundary of the shore for the purposes of the privileges guaranteed to the people of this state by our constitution. **This court has held that the common law governs the rights and obligations of the people of the state unless that law has been modified by our General Assembly**”*

*“**Additionally, we feel that our decision best balances the interests between littoral owners and all the people of the state.** Setting the boundary at the point where the spring tides reach would unfairly take from littoral owners land that is dry for most of the month. Similarly, setting the boundary below the mean-high-tide line at the line of the mean low tide would so restrict the size of the shore as to render it practically nonexistent.”*

*“In the future, any municipality that intends to impose criminal penalties for trespass on waterfront property above the mean-high-tide line **must prove beyond reasonable doubt that the defendant knew the location of the boundary line and intentionally trespassed across it.**”*

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Rhode Island’s History (Continued)

- **Rhode Island Constitution, 1986**

*Article 1 Section 17: “The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state **including but not limited to fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore**”*

*Article 1 Section 16: “and in furtherance of the protection of the rights of the people to enjoy and freely exercise the rights of fishery and the privileges of the shore, as those rights and duties are set forth in Section 17, **shall be an exercise of the police powers of the state, shall be liberally construed, and shall not be deemed to be a public use of private property.**”*

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