

Rockweed

Legal & Regulatory Issues

- Who Owns the Rockweed?
- Current Laws and Regulations
- Recommendations of Fisheries Management Plan

## Pending Lawsuit in Washington County

- Three landowners filed complaint in December 2015
- Defendant: Acadia Seaplants
- Who owns the rockweed growing in the intertidal?
  - Question has been asked for years
  - Differing Views

## Colonial Ordinance of 1641/1647

- Grants upland landowners intertidal land in “fee”
  - Massachusetts Ordinance, now part of common law
  - Applied to Maine in 1820, upon statehood
- Public retains right to “fish, fowl, and navigate”
- Key question: Is rockweed harvesting “fishing”?

## Attorney General's Position (2008)

- Maine's Supreme Court Inconsistent
  - *Moore v. Griffen (1843)*: “(n)o such right of taking sand, sea manure, or ballast is reserved in the grant made to the owner of the adjoining land.”
  - *Hill v. Lord (1861)*: “. . . seaweed belongs to the owner of the soil upon which it grows, or is deposited . . .”
  - *Marshall v. Walker (1900)*: “Others . . . may take sea manure from them (flats).”

# Rockweed Industry's Position

- Statutory Citations
  - Sovereignty, MRSA Title 1
  - Definition of the verb “Fish,” MRSA Title 12
  - Definition of “fishing,” Internal Revenue Service
- Common Law Interpretation
  - Alluvial vs. Non-Alluvial: draw line at normal highwater
  - Liberal interpretation of “fishing, fowling, and navigation”

## MCHT's Position

- Statutory references not relevant
- Rockweed growing in the intertidal is alluvial (owned by landowner)
- *Hill v. Lord (1861)* is clear – 19<sup>th</sup> century citizens did not view seaweed harvesting as fishing

# How Will the Court Respond to Current Case

Bell v. Town of Wells (1989): 4-3 decision

- Majority Opinion: “limited easement for recreation”
- Wathen Dissent
  - “evolving concept of public rights”
  - “(Majority) conclusion is premised upon the erroneous assumption that the Colonial Ordinance is the exclusive and preeminent source of all public rights.”



# How Will the Court Respond to Current Case

Eaton v. Town of Wells (2000): Saufley Concurrence

- Definition of Recreation: “Pursuant to our holding in Bell, a citizen of the state may walk along a beach carrying a fishing rod or a gun, but may not walk along that same beach empty-handed or carrying a surfboard.”
- “In summary, common sense and sound judicial policy dictate that our holding in Bell should be overruled now, in order to preclude continuing uncertainty, expense, and disputes.”

## How Will the Court Respond to Current Case

McGarvey v. Whittredge (2012)

- Three justices go beyond definition of navigation: “(W)e would continue to strike a reasonable balance between private ownership of the intertidal lands and the public's use of those lands.”
- Three justices liberally define “navigation” to include walking across intertidal to go scuba diving.

## How Will the Court Respond to Current Case

Hill v. Lord (1861)

- “That seaweed belongs to the owner of the soil upon which it grows . . . The defendant admits.”

Bell v. Town of Wells (1989): Wathan Dissent

- “Similarly, we have prohibited the taking of seaweed from the flats of another. ‘[T]he title to the seaweed is in the owner of the flats ....’” *Hill v. Lord*, 48 Me. 83, 86 (1861).

# Existing Laws and Regulations

## Statewide

- 16 inch above holdfast
- License for harvesters and buyers

# Existing Law and Regulations

## Cobscook Bay

- Sector management
- DMR-approved annual harvest plans required
- Plan must include biomass assessment
- 17% maximum annual biomass removal per sector
- Must minimize bycatch mortality
- Conservation lands are closed areas

# Fisheries Management Plan (2014)

- On hold – pending legal decision
- Six Recommendations
  1. Maintain 16 inch cutting height
  2. Coastwide sector management: to be implemented by Major Substantive Rules

# Fisheries Management Plan (2014)

- Recommendations (cont.)
  3. Designation of No-harvest Areas: working group focused on priority bird species
  4. Status Quo on Cobscook for now
  5. Mandatory harvester training program
  6. Five-year review by DMR

The End