

# MAINE STATE LEGISLATURE

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Clamming Rights in Intertidal Waters of Maine

Since 1641-1647, with the enactment of the Colony Ordinance, the coastal property under the jurisdiction of the Massachusetts Bay Company, and later of the States of Maine and Massachusetts, has been subject to the rule that riparian owners own the land to low water mark or for 100 rods from high water mark, whichever is shorter, subject, however to the rights of the public to have, among other things, free fishing and fowling in this entire intertidal zone. Below low water mark or beyond 100 rods, the land is owned by the State.

Clams are fish, for purposes of the Colonial Ordinances, and until reduced to actual possession they are owned by the State. This means that in general, the public, and not the riparian owners own the right to take clams below high water mark. The right of a riparian owner to clams on flats which the riparian owns derives not from his status as owner of the flats but as a member of the public.

There are only two significant exceptions to the above rule. First, the riparian has the right under the Colonial Ordinances to extinguish the public's rights by completely enclosing or filling in the intertidal zone owned by the riparian. Today, this activity would undoubtedly constitute an alteration of a "wetland" and would require a permit from the Maine Department of Environmental Protection and the municipality in which the flats are located. Second, there may exist early deeds or conveyances by the sovereign (either the British Crown or the States of Maine or Massachusetts) which supercede or alter the rights of the public as those rights apply to any particular portion of the shoreline. Obviously, riparians must look to their own resources to undertake the research necessary to determine whether or not their particular title is superior to the rights of the public.

LS/mf