

1 2	SECOND REGULAR SESSION
3 4	ONE HUNDRED AND TWELFTH LEGISLATURE
5	Legislative Document No. 1922
7 8 9 10	S.P. 758 Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26. Reference to the Committee on Judiciary suggested and ordered printed. JOY J. O'BRIEN, Secretary of the Senate Presented by Senator Najarian of Cumberland.
11	Cosponsored by Senator Trafton of Androscoggin, Speaker Martin of Eagle Lake and Representative Wentworth of Wells.
12 13	STATE OF MAINE
14 15 16	IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-SIX
17 18 19	AN ACT to Clarify Public Rights to Use the Intertidal Zone.
20 21	Be it enacted by the People of the State of Maine as follows:
22	12 MRSA c. 202-A is enacted to read:
23	CHAPTER 202-A
24	THE PUELIC TRUST IN INTERTIDAL LAND
25	§571. Legislative findings and purpose
26 27 28 29	The Legislature finds and declares that the intertidal lands of the State are impressed with a public trust and that the State is responsible for protection of the public's interest in this land.
30 31 32	The Legislature further finds and declares that this public trust is part of the common law of Maine and is originally derived from English Common Law and

1	Massachusetts Colonial Ordinance of 1641-47. The
2	public trust is an evolving doctrine reflective of
3	the customs and habits of the Maine people. The pub-
4	lic trust encompasses those uses of the intertidal
5	zone essential to the health and welfare of the Maine
6	people, which uses include, but are not limited to,
7	fishing, fowling, navigation, use as a footway be-
8	tween points along the shore and use for recreational
9	purposes. These recreational uses are among the most
10	important to the Maine people today who use the
11	intertidal zone for relaxation from the pressures of
12	modern society and for enjoyment of nature's beauty.
13	The Legislature further finds and declares that
14	misunderstanding concerning the extent of the
15	public's rights to use intertidal land for recrea-
16	tional purposes exists.
17	The Legislature further finds and declares that
18	the protection of the public uses referred to in this
19	chapter is of great public interest and grave concern
20	to the State and that the public benefit will be pro-
21	moted through a clear statement of the scope of the
22	public's rights to use intertidal land.
23	§572. Definitions
24	As used in this chapter, the term "intertidal
25	land" means all land of this State affected by the
26	tides between the natural high watermark and either
27	100 rods seaward from the high watermark or the natu-
28	ral low watermark, whichever is closer to the natural
29	high watermark.
30	§573. Public rights in intertidal land
31 32	<u>1. Public rights. The public's rights in intertidal lands include the following:</u>
33 34	A. The right to use the land for fishing, fowling and navigation;
35	E. The right to use the land for recreation; and
36	C. Any other rights to use the land recognized
37	by the Maine common law and not specifically ab-
39	rogated by law.

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- 1 <u>2. Prohibited uses. The rights described in</u> 2 <u>subsection 1 do not include:</u>
- A. The removal from the intertidal land of any:
 Animal life, other than fish or fowl obtained by
 fishing or fowling; plant life; products or remains of animal or plant life; or sand, soil,
 rocks or other minerals;
- 8 B. Interference with any structure, development 9 or improvement erected or maintained on 10 intertidal land in accordance with the laws of 11 this State; or
- 12C. The depositing of any refuse or waste on13intertidal land or in the water covering14intertidal land.

STATEMENT OF FACT

16 This bill clarifies the public's right to the use 17 of the intertidal area.

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- 18 Just 3% of the Maine coastline is in public own-19 ership, the smallest percentage of any state in the nation. While most of the coastline is privately owned to the low water mark, the common law of Maine, 20 21 22 which includes the Colonial Ordinances of 1641-47, established the public's right to use the intertidal area for various, necessary purposes. The public 23 24 25 uses explicitly enumerated in the Colonial Ordinances 26 were those of greatest importance to the colonial 27 residents; but, as the Justices of the Maine Supreme 28 Judicial Court have stated:
- 29 "Navigation, fishing, and fowling were the historical purposes for which the public trust 30 31 principle was developed in common law. Those public uses of the intertidal and submerged lands 32 33 remain important, but others have grown up as well. The press of an increasing population has 34 35 led to heavy demands upon Maine's great ponds and seacoast for recreational uses." 36
- 37 <u>Opinion of the Justices</u>, 437 A.2d 597, 607 (Me. 38 1981).

1 The Legislature has also recognized the 2 preeminent value of the seacoast "as a source of pub-3 lic and private recreation and solace from the 4 pressures of an industrialized society." (Oil Spill 5 Prevention and Pollution Control Act, the Maine Re-6 vised Statutes, Title 38, section 541.)

7 Because neither the Legislature nor the judiciary has explicitly declared the public's right to recrea-8 9 tional use of the intertidal zone, persons unfamiliar 10 with the long-standing Maine tradition of public recreational use of the intertidal zone -- for strolling, bathing, nature study, etc. -- have chal-11 12 lenged the public's rights. The conflict between 13 private landowners and members of the public assert-14 15 ing their right to recreational use of intertidal land areas will only increase with the increasing population pressures on the coast. 16 17

Property owners along Moody Beach recently went 18 19 to court alleging that clear title to their property 20 requires resolution of this issue. Their suit was 21 dismissed without a ruling on this issue. It is now 22 time to resolve this issue by confirming the public's 23 rights to use the intertidal zone, just as our ancestors found it wise to confirm the portions of common 24 25 law of most importance to their day through passage of the Colonial Ordinances. 26

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