

# MAINE STATE LEGISLATURE

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1 (New Draft of S.P. 758, L.D. 1922)  
2 (New Title)  
3 SECOND REGULAR SESSION  
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5 ONE HUNDRED AND TWELFTH LEGISLATURE  
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7 Legislative Document

No. 2380

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9 S.P. 950

In Senate, April 11, 1986

10 Reported by the Majority Report from the Committee on Judiciary and  
11 printed under Joint Rule 2. Original bill sponsored by Senator Najarian of  
12 Cumberland. Cosponsored by Senator Trafton of Androscoggin, Speaker  
Martin of Eagle Lake and Representative Wentworth of Wells.

JOY J. O'BRIEN, Secretary of the Senate

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14 STATE OF MAINE  
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16 IN THE YEAR OF OUR LORD  
17 NINETEEN HUNDRED AND EIGHTY-SIX  
18

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19 AN ACT to Confirm and Recognize Public Trust  
20 Rights in Intertidal Land.  
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22 Be it enacted by the People of the State of Maine as  
23 follows:

24 12 MRSA c. 202-A is enacted to read:

25 CHAPTER 202-A

26 THE PUBLIC TRUST IN INTERTIDAL LAND

27 sec. 571. Legislative findings and purpose

28 The Legislature finds and declares that the  
29 intertidal lands of the State are impressed with a  
30 public trust and that the State is responsible for  
31 protection of the public's interest in this land.

1        The Legislature further finds and declares that  
2 this public trust is part of the common law of Maine  
3 and generally derived from the practices, conditions  
4 and needs in Maine, from English Common Law and from  
5 the Massachusetts Colonial Ordinance of 1641-47. The  
6 public trust is an evolving doctrine reflective of  
7 the customs, traditions, heritage and habits of the  
8 Maine people. In Maine, the doctrine has diverged  
9 from the laws of England and Massachusetts. The pub-  
10 lic trust encompasses those uses of intertidal land  
11 essential to the health and welfare of the Maine peo-  
12 ple, which uses include, but are not limited to,  
13 fishing, fowling, navigation, use as a footway be-  
14 tween points along the shore and use for recreational  
15 purposes. These recreational uses are among the most  
16 important to the Maine people today who use  
17 intertidal land for relaxation from the pressures of  
18 modern society and for enjoyment of nature's beauty.

19        The Legislature further finds and declares that  
20 the protection of the public uses referred to in this  
21 chapter is of great public interest and grave concern  
22 to the State.

23 sec. 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 ordinary high watermark and either  
27 100 rods seaward from the high watermark or the ordi-  
28 nary low watermark, whichever is closer to the ordi-  
29 nary high watermark.

30 sec. 573. Public trust rights in intertidal land

31        1. Public trust rights. The public trust rights  
32 in intertidal land include the following:

33        A. The right to use intertidal land for fishing,  
34 fowling and navigation;

35        B. The right to use intertidal land for recre-  
36 ation; and

37        C. Any other trust rights to use intertidal land  
38 recognized by the Maine common law and not spe-  
39 cifically abrogated by statute.



1 explicitly enumerated in the Colonial Ordinances were  
2 those of greatest importance to the colonial resi-  
3 dents; but, as the Justices of the Maine Supreme Ju-  
4 dicial Court have stated:

5 "Navigation, fishing and fowling were the histor-  
6 ical purposes for which the public trust princi-  
7 ple was developed in common law. Those public  
8 uses of the intertidal and submerged lands remain  
9 important, but others have grown up as well. The  
10 press of an increasing population has led to  
11 heavy demands upon the State's great ponds and  
12 seacoast for recreational uses."

13 Opinion of the Justices, 437 A.2d 597, 607 (Me.  
14 1981).

15 The Legislature has also recognized the  
16 preeminent value of the seacoast "as a source of pub-  
17 lic and private recreation and solace from the  
18 pressures of an industrialized society." (Oil Spill  
19 Prevention and Pollution Control Act, the Maine Re-  
20 vised Statutes, Title 38, section 541.)

21 Persons unfamiliar with the long-standing Maine  
22 tradition of public recreational use of intertidal  
23 land — for strolling, bathing, nature study — have  
24 challenged the public's rights. The conflict between  
25 private landowners and members of the public assert-  
26 ing their rights to recreational use of intertidal  
27 land areas will only increase with the increasing  
28 population pressures on the coast.

29 It is now time to confirm the public trust rights  
30 to use intertidal land, just as our ancestors found  
31 it wise to confirm the portions of common law of most  
32 importance to their day through passage of the  
33 Colonial Ordinances.