

PUBLIC ACCESS RIGHTS ALONG THE COMMONWEALTH COAST

By Anne Donovan, CZM

As summer begins, a frequent question is, “What are my legal rights along the more than 1,500 miles of Commonwealth coastline?” For the privately owned shoreline, the answer is somewhat complicated, but we’ll do our best to explain.

Let’s start with the most straightforward things first. For natural shorelines (i.e., those never modified by filling), the area beyond the typical reach of the high tide (technically known as “mean high tide”) is generally private property. The owner can exclude the public completely from this area, unless an easement or other legal right-of-way allows public access across the property. Equally straightforward is the submerged land beyond mean low water, which is almost always owned by the Commonwealth and generally open to all.

The tricky part is the so-called “tideflats,” or the area between mean high tide and mean low tide. This intertidal area is governed by the Public Trust Doctrine, which was born in ancient Rome, later made its way to English common law, and was adopted by the Colonies and then by all coastal states upon formation of the Union. Basically, the Public Trust Doctrine

holds that certain property rights in tidelands (i.e., all lands presently or formerly subject to tidal action) are held by the state for the common good of its people. In most of the U.S., this doctrine has been used to keep the tideflats in public ownership. In these states, once you get to the shore, you can walk freely over this periodically wet strip of coastline.

In Massachusetts (except for a large section of Provincetown), our Colonial forefathers in the 1640s granted ownership of the tideflats to shorefront property owners to stimulate coastal economic development through the building of wharves and docks. Public rights to use this portion of the tidelands, however, were specifically reserved for three purposes: fishing, fowling, and navigation. So, once you make your way to the Massachusetts shore through some kind of public accessway, you are free to move about below the high water mark to catch fish and harvest shellfish, hunt birds, and maneuver a vessel, as long as you obey local and state regulations, of course. In addition, the Massachusetts Attorney General’s Office broadly defines “fowling” to include birdwatching, although this definition

has not been tested in the courts.

To add to the complexity, property owners were granted ownership of the tideflats for only 100 rods (in modern terms, 1,650 feet) from high water. So on intertidal areas wider than 1,650 feet, the public can use the seaward-most reaches for any lawful purpose. Also, on tideflats that have been filled for development and are now dry land, a host of public property rights are protected by Chapter 91 of the Massachusetts General Laws (but that is another story altogether).

Still confused? The AG’s Office has a great pamphlet, *Public Rights/Private Property: Answers to Frequently Asked Questions on Beach Access*, available at <http://www.ago.state.ma.us/pubs/beachacc.pdf> (PDF version) and <http://www.ago.state.ma.us/pubs/beachacc.htm> (HTML version). The CZM Web site also has a piece called *Public Rights Along the Shoreline* at <http://www.mass.gov/czm/shorelinepublicaccess.htm>. If you don’t have Web access, call the CZM Information Line at (617) 626-1212 and we can send you copies.