

2022 -- H 8055

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

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A N A C T

RELATING TO WATERS AND NAVIGATION -- COASTAL RESOURCES MANAGEMENT
COUNCIL

Introduced By: Representatives Cortvriend, Filippi, Fogarty, Ruggiero, Carson, Craven,
Handy, Knight, Cassar, and Bennett

Date Introduced: March 25, 2022

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative findings.

2 (1) The general assembly finds that the lack of a workable, readily identifiable right of
3 access to the shore by the public has led to confusion, conflict and disputes between those
4 attempting to exercise their rights and privileges to the shoreline and the rights of property owners
5 along the shore.

6 (2) The general assembly recognizes and declares the public's rights and privileges of the
7 shore of this the ocean state are not only guaranteed in the constitution but have enjoyed a long use
8 going back to our founding documents, including the 1663 Rhode Island Charter from King Charles
9 II. The general assembly further acknowledges the use and enjoyment of the shore by Native
10 Americans for thousands of years prior to that.

11 From the Rhode Island Charter (1663-1843)

12 "Our express will and pleasure is, and we do, by these presents, for us, our heirs and
13 successors, ordain and appoint that these presents, shall not in any manner, hinder any of our loving
14 subjects, whatsoever, from using and exercising the trade of fishing upon the coast of New England,
15 in America, but that they, and every or any of them, shall have full and free power and liberty to
16 continue and use the trade of fishing upon the said coast, in any of the seas thereunto adjoining, or
17 any arms of the seas, or salt water, rivers and creeks, where they have been accustomed to fish, and
18 to build and set upon the waste land belonging to the said Colony and Plantations, such wharves,

1 stages and workhouses as shall be necessary for the salting, drying and keeping of their fish, to be
2 taken or gotten upon that coast."

3 (3) Rhode Island's historical commitment to the public rights and privileges of the shore is
4 so strong that it was written into our Constitution in 1843 making us unique to other states:

5 From the Rhode Island Constitution (1843)

6 "The people shall continue to enjoy and freely exercise all the rights of fishery, and the
7 privileges of the shore, to which they have been heretofore entitled under the charter and usages of
8 this state. But no new right is intended to be granted, nor any existing right impaired, by this
9 declaration".

10 (4) The general assembly also recognizes that its public trust duty to preserve the public's
11 rights and privileges of the shore is a progressive and evolving doctrine that is expected to adjust
12 to changing circumstances. In this spirit voters of Rhode Island overwhelmingly supported the
13 reinforcement of these rights and privileges in 1986 following the constitutional convention of that
14 same year.

15 Added to the constitution in 1986

16 "Section 16. Compensation for taking of private property for public use -- Regulation of
17 fishery rights and shore privileges not public taking.

18 Private property shall not be taken for public uses, without just compensation. The powers
19 of the state and of its municipalities to regulate and control the use of land and waters in the
20 furtherance of the preservation, regeneration, and restoration of the natural environment, and in
21 furtherance of the protection of the rights of the people to enjoy and freely exercise the rights of
22 fishery and the privileges of the shore, as those rights and duties are set forth in Section 17, shall
23 be an exercise of the police powers of the state, shall be liberally construed, and shall not be deemed
24 to be a public use of private property.

25 Section 17. The people shall continue to enjoy and freely exercise all the rights of fishery,
26 and the privileges of the shore, to which they have been heretofore entitled under the charter and
27 usages of this state, including but not limited to fishing from the shore, the gathering of seaweed,
28 leaving the shore to swim in the sea and passage along the shore; and they shall be secure in their
29 rights to use and enjoyment of the natural resources of the state with due regard for the preservation
30 of their values; and it is the duty of the general assembly to provide for the conservation of the air,
31 land, water, plant, animal, mineral and other natural resources of the state, and to adopt all means
32 necessary and proper by law to protect the natural environment of the people of the state by
33 providing adequate resource planning for the control and regulation of the use of the natural
34 resources of the state and for the preservation, regeneration, and restoration of the natural

1 environment of the state."

2 (5) In the past, the public's rights to the shore has been defined by the mean high water
3 (MHW) line. However, the changing state of general understanding of scientific knowledge has
4 caused greater dissemination of information and measurements. This has revealed difficulties in
5 using the MHW line. MHW is not a water mark or debris line that can be seen on the beach. Because
6 it is an elevation and not a natural feature, MHW cannot be determined by the naked eye and
7 requires special surveying expertise and equipment, thereby making it impossible for the general
8 public to know where the line is. Moreover, the dynamics of the sea, such as waves, push water up
9 the beach such that MHW is typically seaward of the actual position of the water on the beach. In
10 other words, the velocity of the surf results in a pervasive and predominant situation in which the
11 actual location of the water is significantly landward of the MHW. Furthermore, the profile or shape
12 of the beach changes constantly, thereby affecting the relative position of the water and MHW. The
13 general assembly accepts the conclusions of the coastal scientists from the University of Rhode
14 Island who have documented that: (i) MHW is a calculation with no visible marker on the shoreline;
15 (ii) The actual location of the water on beaches is usually landward of MHW; and (iii) Because the
16 beach profile changes constantly as waves move sand onshore, offshore and alongshore, the
17 location where MHW intersects the beach likewise changes. Data shows that, on most days, due to
18 the dynamic action of the surf and other factors, the dry sand is exposed below MHW for, at most,
19 only a few hours. This occurs only at or near the time of low tide. In addition, two years of near-
20 weekly beach transects in the town of Charlestown show that the position of the MHW line
21 migrated back and forth across a one hundred twenty-five foot (125') swath of the beach profile. In
22 sum, using a rule based on MHW results in the public only having meaningful access at or near the
23 time of low tide if at all. Moreover, the MHW leads to a nearly indeterminable boundary. Thus,
24 using a rule based on MHW, the constitutional right and privileges of the shore may be illusory.

25 (6) The general assembly further recognizes and declares that the public's rights and
26 privileges of the shore along the sandy and rocky shores of Rhode Island are critical to the state's
27 tourism economy. Rhode Island's 400 miles of coastline and Narragansett Bay make us a
28 destination for a variety of recreational activities including beach going, swimming, saltwater
29 fishing, surfing, kayaking, and wind-surfing.

30 (7) The general assembly acknowledges that private property owners may maintain a title
31 interest to the sandy and rocky shores, but certain components of ownership, such as the ability to
32 share in reasonable use of the shore, are held in trust for the general public under the state
33 constitution and must be defined and secured.

34 (8) The general assembly also recognizes that it has the duty to protect the public's rights

1 and privileges in the dry-sand portions of our sandy beaches and rocky shores.

2 SECTION 2. Chapter 46-23 of the General Laws entitled "Coastal Resources Management
3 Council" is hereby amended by adding thereto the following section:

4 **46-23-26. Recognizable High Tide Line for the Public's Rights and Privileges of the**
5 **Shore.**

6 (a) For purposes of this chapter, the "recognizable high tide line" means a boundary which
7 is ten feet (10') landward from the line or mark left upon tide flats, beaches, or along shore objects
8 that indicates the intersection of the land with the water's surface level at the maximum height
9 reached by a rising tide. The recognizable high tide line may be determined by a line of seaweed,
10 oil or scum along shore objects, a more or less continuous deposit of, fine shell or debris on the
11 foreshore or berm, other physical markings or characteristics, or other suitable means that delineate
12 the general height reached by the water's surface level at a rising tide. The line encompasses the
13 water's surface level at spring high tides and other high tides that occur with periodic frequency,
14 but does not include the water's surface level at storm surges in which there is a departure from the
15 normal or predicted reach of the water's surface level due to the piling up of water against a coast
16 by strong winds, such as those accompanying a hurricane or other intense storms.

17 (b) The public's rights and privileges of the shore are established by Article 1, Sections 16
18 and 17 of the Rhode Island Constitution.

19 (c) The public's rights and privileges of the shore may be exercised, where shore exists, on
20 wet sand or dry sand or rocky beach, up to the recognizable high tide line; provided, however, that
21 the public's rights and privileges of the shore shall not be afforded where no passable shore exists,
22 nor on land above the vegetation line, sea walls, or other legally constructed shoreline
23 infrastructure.

24 (d) Any landowner whose property is subject to the exercise of the public's rights and
25 privileges of the shore as defined in this chapter shall be afforded the liability limitations pursuant
26 to § 32-6-5.

27 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO WATERS AND NAVIGATION -- COASTAL RESOURCES MANAGEMENT
COUNCIL

- 1 This act would provide a definition of the recognizable high tide line for the public's rights
- 2 and privileges of the shore.
- 3 This act would take effect upon passage.

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