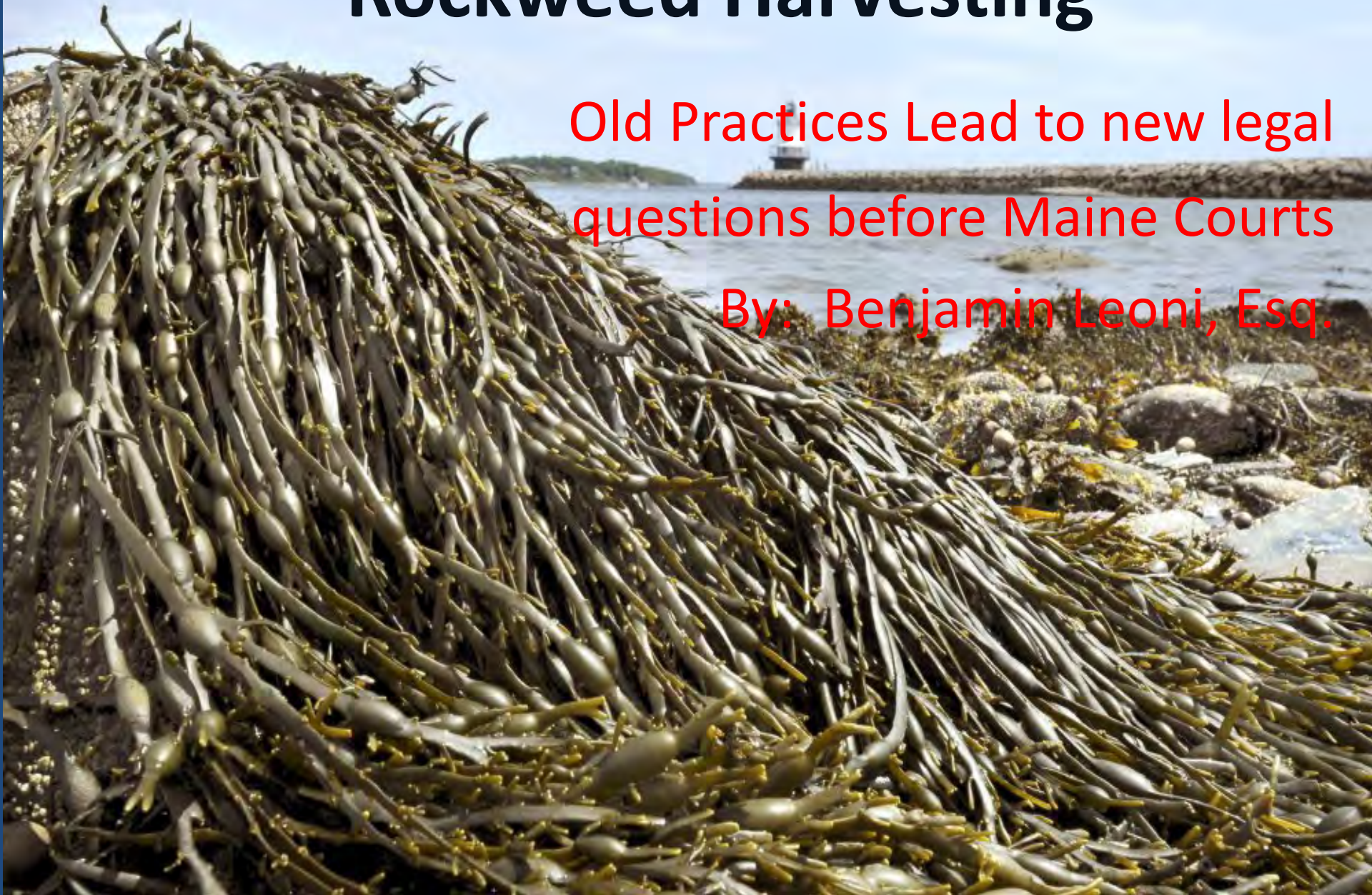


# Rockweed Harvesting

Old Practices Lead to new legal questions before Maine Courts

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‘what a great way to make money and  
enjoy my Colonial Ordinance Rights’



# Historical context



# Rockweed Facts

- Each plant is either male or female – eggs and sperm released into the currents
- Secured to intertidal zone using a “holdfast”
- Can live in that location for very long time
- Intertidal zone species
- Survive off of nutrients in the ocean
- Shed up to 60% of biomass each year
- Constitute 95% of seaweed harvest every year in Maine

# Department of Marine Resources

- The State has declared that it “owns and shall control the harvesting of the living resources of the seas adjoining the coastline for a distance of 200 miles or to the furthest edge of the Continental Shelf, whichever is greater, subject only to the boundary with Canada.” 1 M.R.S. § 2(2-A).
- Also licenses and regulates rockweed harvest

# *Ross et al. v. Acadian Seaplants*

- Plaintiffs assert that:
  - Rockweed is owned exclusively by upland owner
  - Rockweed harvest is not a form of “fishing”
  - Seeking permanent injunction to prevent others from harvesting rockweed from intertidal zone.

# But first: Why file the lawsuit?

- Plaintiffs themselves are silent on issue but for others, it appears to come down to:
  - Noise made by harvesters;
  - The principle of someone else taking what they believe is their property;
  - Money;
  - Conservation concerns;
  - Increased commercialization of the resource;

# Conservation Concerns

- “It just doesn’t make sense to a lot of people to take away habitat when a lot of other species — commercial and wildlife — depend on (it). It seems as if the landowner should be able to make decisions just the way they would in their own forest to conserve it for habitat, or for their own use.” Dr. Robin Hadlock-Seeley, Rockweed Coalition
- Joined by Downeast Coastal Coalition and Maine Coastal Heritage Trust, for example.



# Conservation Cont.

- “There are a lot of serious environmental problems in the world and this is not one of them,” she said in an interview May 13, during which she referred to Hadlock Seeley as an “activist.”
- “The idea that you’re eliminating the canopy is wrong. The harvesters are working from boats, rocking up and down and moving with the current. It is more like selective cutting. All in all it is the gentlest fishery in Maine because the organisms are not killed and they regenerate quickly.”
- Dr. Susan Bradley, Umaine Professor of Marine Biology
- Also recent study by Unity Professor Aimee Philippi found
  - Increased periwinkles and clams, decreased green crabs
  - Healthier ecosystem attributed to place used to losing biomass

# Legal Arguments: Plaintiffs

- “There is testimony to show that seaweed, instead of drifting to Vaughan’s island from distant places, grows on its soil and in its immediate vicinity,” the 1861 decision reads. “It is thus as much a crop of the plaintiff as the herbage on his uplands. A right to take a profit in another’s soil cannot be acquired by prescription in this State.” *Hill v. Lorde*

# Legal Arguments Continued

- “Harvesting a terrestrial plant is no more a fishing activity such as worming, digging for mussels, trapping lobsters, or dropping a line for fish clearly are, than is harvesting a tree the same as hunting or trapping wildlife.”  
(Superior Court decision)
- Focus on difference between plants and animals (animals owned by state, plants owned by landowner).

# Harvester's legal arguments

- Marine organisms are owned by the State because they are the product of the sea, not a product of the land.
- They are no different than an oyster or mussel
- If digging up a “worm” is “fishing” then harvesting seaweed is too.
- “The public trust rights generally have been articulated in terms of activities that involved or are incidental to obtaining sustenance or economic benefits through the harvesting of the sea.” *McGarvey v. Whittredge*, 2011 ME 97, ¶ 20; 28 A.3d 620 (Saufley, C.J.).

Is this fishing?



# How this fits in with other rights

- Clams
- Mussels and Oysters
- Marine worms
- Trees
- Plants v. Animals

# Impacts of Decision

