

# Back to the beach with the Maine Law Court

**John Duff, JD, LL.M.  
School for the Environment  
UMass Boston**

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# Who owns the Seaweed?

By John Duff

For centuries individuals have moved along the shore and shallow waters of present-day Maine to harvest a variety of seaweeds for a wide range of uses. Seaweed is used as fertilizer and cattle fodder as well as in food products and cosmetics.

For centuries there has been little, if any, conflict over who has the right to harvest and use this versatile resource. As seaweed becomes an increasingly valuable commercial product however, the question over ownership or access to seaweed in Maine is becoming more than a theoretical issue.

Faced with increased harvesting activities, Maine enacted a seaweed permitting system in 1999.<sup>1</sup> While the state called for commercial harvesters to acquire permits and report their harvesting levels, the legislature expressly exempted certain harvesters from the permitting requirement. And while the law authorized the state Department of Marine Resources to enact harvesting regulations, it did not directly address who owns seaweed in Maine.

## *Doesn't the state own seaweed?*

Since seaweed grows in the sea doesn't that make it a public resource managed by the state? The location of a resource in subtidal areas answers the ownership question in most states, but not in Maine. As many coast watchers know, Maine and Massachusetts differ from other states in that coastal property owners often own land down to the low tide line (in the other states, the private property interest ends at the high tide line).

## *Then doesn't a Maine coastal property owner own the seaweed in the intertidal zone?*

Fortunately we have a case that answers the question. Unfortunately, the case is over one hundred and forty years old and was decided by a court that did not have the benefit of a modern understanding of phycology.

In the case of *Hill v. Lord*, the Maine Supreme Judicial Court addressed a seaweed ownership issue and ruled in favor of the private property owner.<sup>2</sup> In so

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# Maine Department of Marine Resources

## FISHERY MANAGEMENT PLAN FOR ROCKWEED (*Ascophyllum nodosum*)



January 2014

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*Maine Department of Marine Resources*

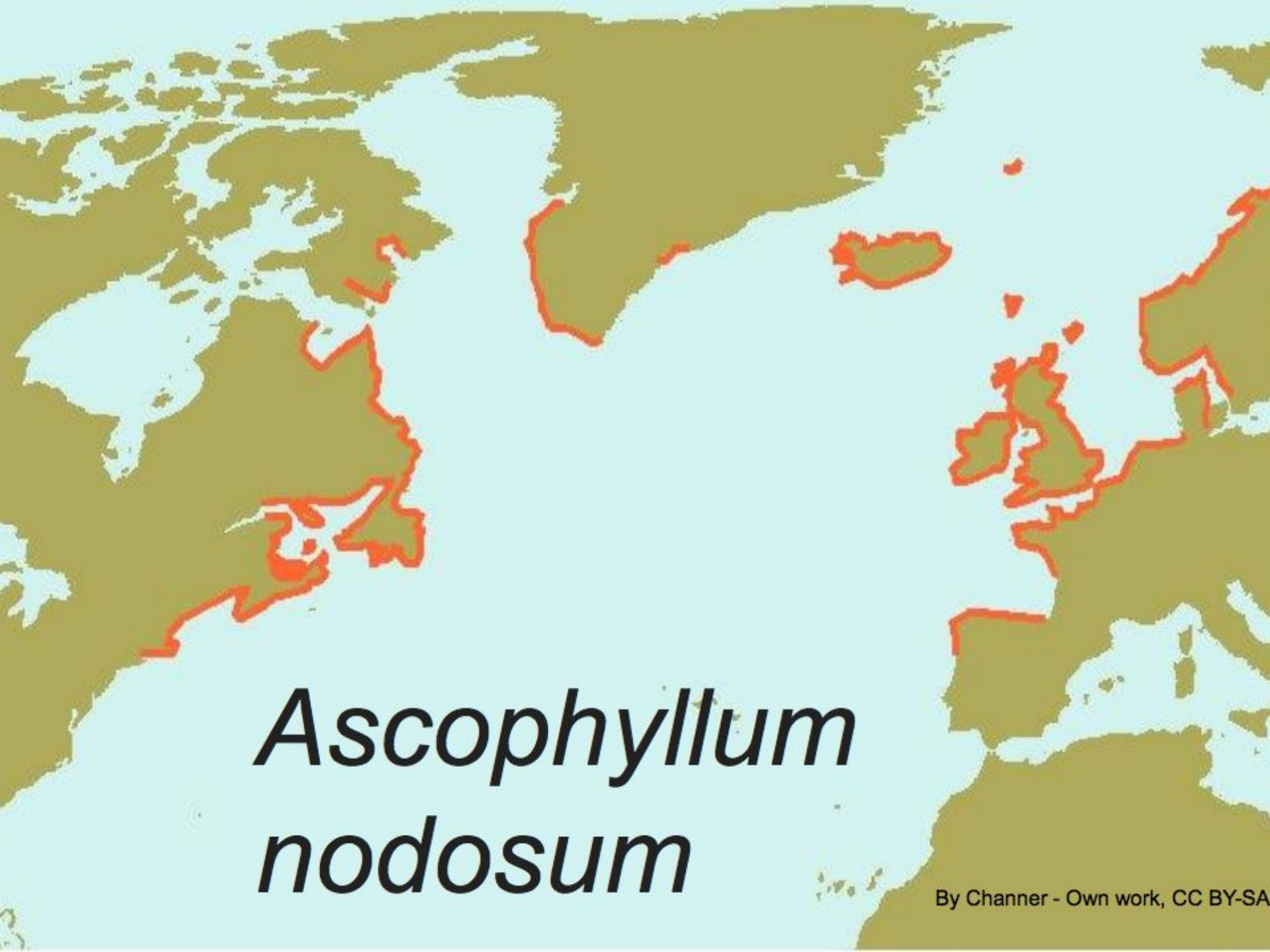
FISHERY MANAGEMENT PLAN FOR  
ROCKWEED (*Ascophyllum nodosum*)



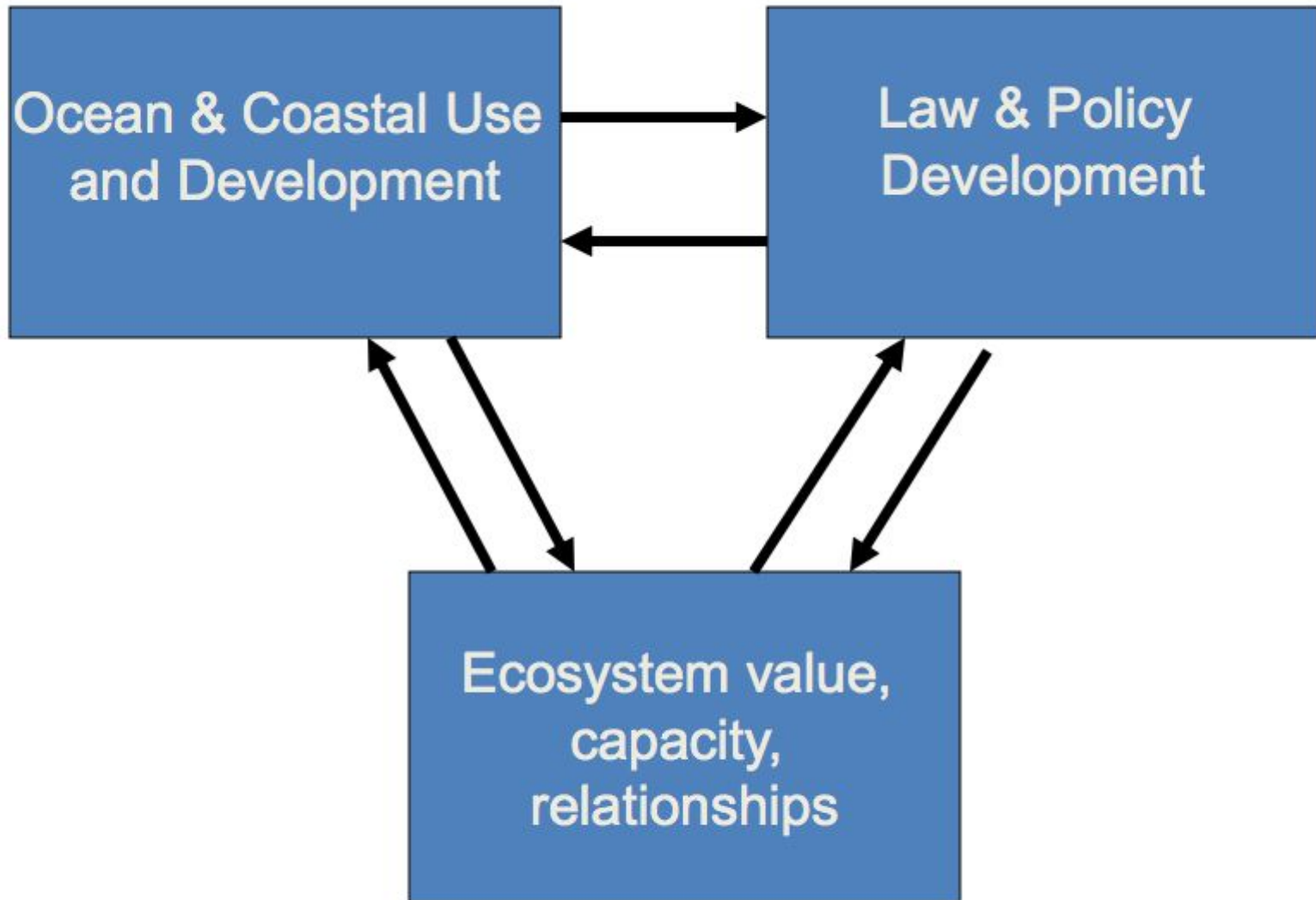
Ownership of Intertidal Seaweed p. 1

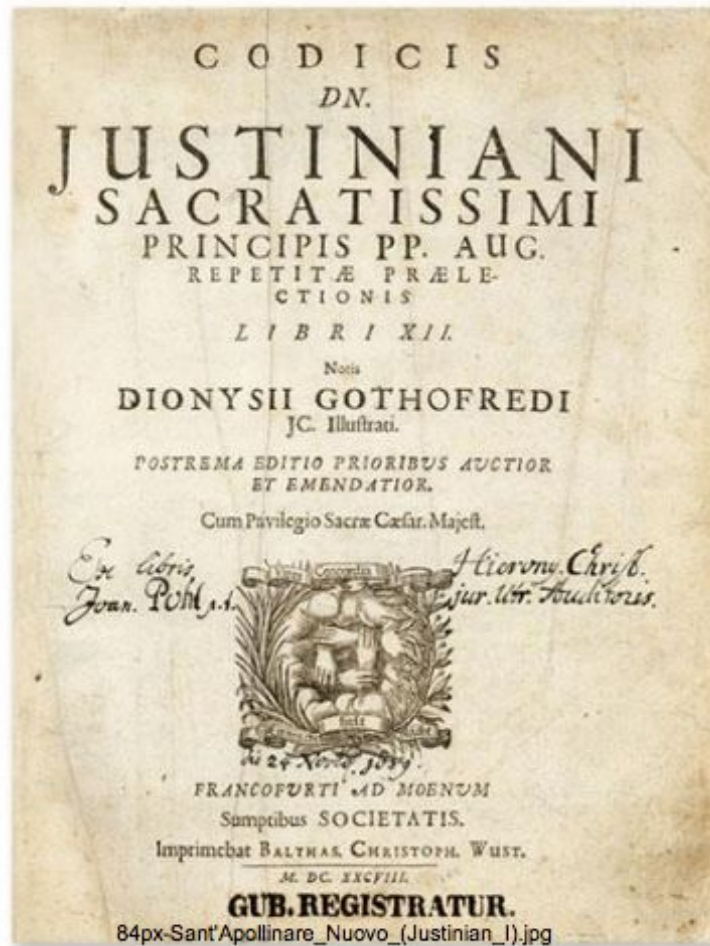
**“Ownership of intertidal seaweed  
remains unresolved.”**

**January 2014**

A world map with a light blue background. The landmasses are shown in a dark grey color. A thick red outline highlights the British Isles (Great Britain and Ireland) and the Azores archipelago in the Atlantic Ocean. The text 'Ascophyllum nodosum' is overlaid on the map in a large, bold, italicized black font.

*Ascophyllum  
nodosum*

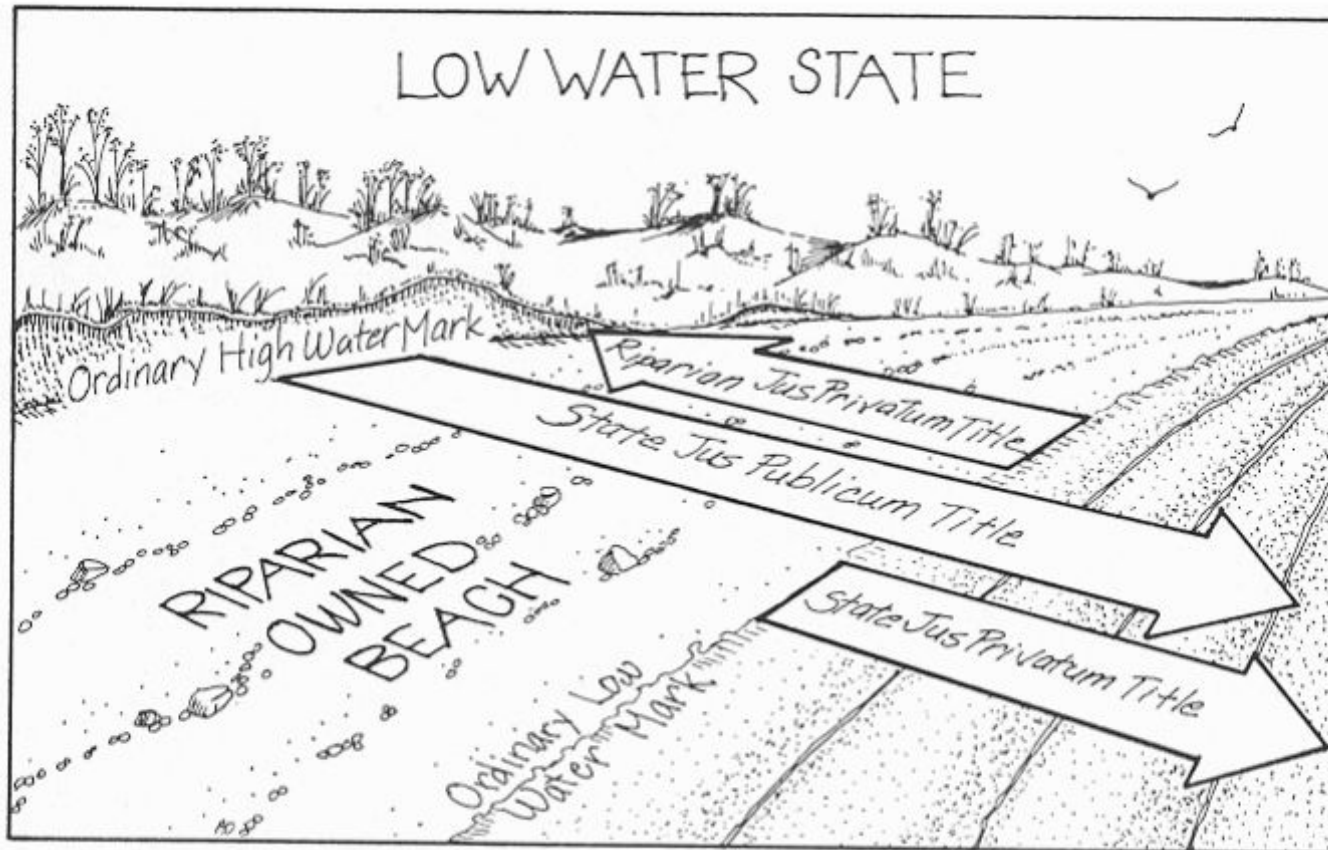




“Things common to mankind by the law of nature, are the air, running water, the sea, and, consequently the shores of the sea.”

JUSTINIAN, THE INSTITUTES OF JUSTINIAN 2.1.1 (Thomas Cooper trans. & ed., 1841)

# The Public Trust Doctrine (ME/MA)



In "low water" States, the State continues to hold the *jus publicum* (trust) even though the *jus privatum* (proprietary) title is privately held.



A beach day  
in 2019



1500 years of  
shore law & policy

Bell v. Wells  
1989

A beach day  
in 2019

McGarvey v.  
Whittredge  
2011

Ross v. Acadian  
Seaplant 2019



Almeder v. K'port  
Law Court 2019

Eaton v. Wells  
2000

Almeder  
v. Kennebunkport

1500 years of  
shore law & policy

Almeder v. K'port  
Superior Court 2013

Almeder v. K'port  
Law Court 12/14

Almeder v. K'port  
Law Court 4/2014

Almeder v. K'port  
Sup .Ct 4/2018

# Maine's top court rules seaweed belongs to the landowner

A major harvester of rockweed warns that the court's ruling could have a negative impact on jobs in Maine.

BY **MEGAN GRAY** STAFF WRITER



Share      



Rockweed, shown in South Portland, is used as a fertilizer and food additive, in packaging for bait and lobster, in cosmetics and as a nutritional supplement. *Staff file photo by John Patriquin*

**1 BELOW LOW TIDE**

**2 INTERTIDAL**

**3 UPLAND**

Coastal waters  
← out to 3 nautical miles

High tide

Low tide

Submerged lands



State of Maine  
held in public trust

Typically private with  
public rights to "fish"  
"fowl" and "navigate"

Typically private with  
public rights as granted by  
gift, easement, etc.

OWNERSHIP

# Public Shoreline Access in Maine:

## A Citizen's Guide to Ocean and Coastal Law

Produced by the Maine  
Sea Grant College  
Program, Maine Coastal  
Program/Department  
of Agriculture,  
Conservation and  
Forestry, and  
Wells National Estuarine  
Research Reserve

Third Edition  
August 2016



Maine's **intertidal zone** can be **privately owned**, but **public still has right to:**

- fish,
- fowl,
- navigate,
- scuba dive.

But **NOT** to harvest rockweed.

Walking?

at the beach