

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 tidelands 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.

POINTS OF ACCESS...

For more information on
Massachusetts **BEACHES WITH
PUBLIC ACCESS**, check out
these web sites:

www.state.ma.us/film/feefree/beaches.htm

www.boston.com/sports/swimming

www.msba.net
(click on "Access Points" on the navigation bar)

www.tbha.org



SURFING AT GLOUCESTER'S GOOD HARBOR BEACH

Good Harbor Beach on Cape Ann is an east-facing sandy barrier beach about one-half mile long. This public beach is a popular local and regional recreational destination in summer and winter. While the ocean temperature remains chilly during the summer (mid-60 degrees), the width and gentle slope of the beach and the relatively shallow nearshore area make this a nearly perfect beach for all activities. The southern end of the beach ends at a rocky headland, where east and southeast swells wrap around the point and produce good surfing waves. Under just the right conditions, waves breaking to the left inside Bass Rocks can be ridden 50 yards up the creek. In the summer, when lifeguards patrol the beach, surfing is permitted only before 9:00 am and after 5:00 pm. Water quality is generally good, except after heavy rains when an outgoing tide drains the marsh. The summer parking fee (Memorial Day to two weeks after Labor Day) for non-residents is \$15.00 on weekdays and \$20.00 on weekends and holidays.

photo by Brandy

