



ARRIVING IN EASTPORT on May 2 after sailing solo for most of the 2,000-mile journey from Florida is Steve Koenig. He set sail on February 26 aboard Lullaby, a Southern Cross 31 cutter-rig sailboat. He reports that the vessel, which has a full keel, was very seaworthy in five-foot swells in Buzzards Bay, gale-force winds across Long Island Sound and 35-knot winds on Chesapeake Bay. During the section from Rockport, Mass., to Portland a minke whale surfaced three times right next to the boat. "That was unbelievable," he says. Along the way he visited his in-laws Ed and Pat Scott in South Carolina and his son Nathanael in New York City. (Treena Brunelle photo)

Aquaculture proposal killed by committee

by Edward French

A legislative committee has effectively killed a bill that would further regulate the aquaculture industry in Maine. The Marine Resources Committee voted unanimously during a work session on April 20 to give the measure an ought-not-to-pass recommendation.

The bill, sponsored by Rep. Robert Alley of Beals, had attracted widespread interest because of recent aquaculture proposals, including a plan for a salmon farm in Frenchman's Bay near Mount Desert Island. Lobster fishermen, who feared displacement from their fishing

grounds, were among those favoring the measure, while those in the aquaculture industry were strongly opposed. The Maine Department of Marine Resources (DMR) also was opposed, testifying that the bill would end the existence of finfish aquaculture in Maine, because it would not allow for rotational management and the fallowing of sites.

The measure would have restricted any single lease from exceeding 50 acres in area and any person from having ownership interest in more than 10 leases or total lease areas in excess of 100 acres and would have removed the current exemption from compliance with the state's Natural Resources Protection Act and the site location of development laws. It also would have required the DMR to hold stakeholder meetings to develop a strategic aquaculture plan.

Lawsuit seeks ruling on beach ownership

by Edward French

A lawsuit seeking a court declaration that the intertidal lands in Maine are owned by the state in trust for public use would overturn hundreds of years of practice and court rulings concerning private ownership of the lands, according to an attorney for the defendants in the case. The suit, filed on April 22 in Cumberland County Superior Court, was announced at a press conference at Moody Beach in Wells, which was the focus of previous court cases on the issue. The suit lists 23 individual plaintiffs, including owners of seaweed companies seeking to harvest in the intertidal area without permission of the upland landowners, and 10 individual defendants, who the suit alleges have been complicit in causing Maine citizens to be "threatened, harassed and chased off land that belongs to them."

"We held our press conference today at the scene of the crime, the symbolic home of the 1989 Bell versus the Town of Wells decision by the Maine Supreme Court," says Benjamin Ford, one of the three attorneys who will represent the plaintiffs. "As former Chief Justice Saufley has noted, those decisions 30 years ago contained 'faulty legal analysis.' We will delineate that faulty analysis as the case proceeds, and in the end we're confident Maine law will once again clearly state that the people of Maine own all the beaches along the coast and all the intertidal lands." According to Ford, the 4-3 Bell decision effectively restricted use of the intertidal lands by declaring that if private upland owners could provide a deed for their land stating ownership to the "ocean," the general public would be in violation of trespass laws if using the shoreline below that mark.

However, Gordon Smith, an attorney with the law firm Verrill Dana who represents the defendants from the Downeast and midcoast areas, states, "I think this issue of state ownership of intertidal land is an academic argument that has been floated for several years," particularly by one person – Orlando Delogu of Portland, a retired professor from the University of

Maine School of Law. "This is an argument that the court has rejected in multiple intertidal cases."

Smith says there are two different groups of plaintiffs – those from southern Maine seeking public access to recreational beaches like the one in Wells and those in the Downeast and midcoast areas who are seeking to harvest rockweed. Noting that the lawsuit is focused on the claim that the state owns all of the intertidal land in Maine, he points out that the Maine Supreme Judicial Court has rejected that argument every time it has come up. "There's no ambiguity with the court on that issue," says Smith.

In its last ruling, the 2019 Ross decision, the high court held unanimously that the harvesting of rockweed is not in the public's rights in the intertidal zone and that harvesters must obtain permission from upland landowners. The court has held that the public's rights in the intertidal zone are limited to fishing, fowling and navigating, as outlined in a 1641-1647 colonial ordinance. However, three of the justices in the Ross decision issued a separate concurring opinion that differed on the rationale. They argued that the law court's 1989 decision erroneously limited the public's use of beaches and that the public's reasonable and nonabusive use of the intertidal zone should include the right to walk on the beaches. The harvesting of rockweed, though, would not fall within that access.

As for why specific individuals are named as defendants, Smith says that the rockweed companies who are among the plaintiffs had to show they had been harmed in order to have standing in the court case. But he also notes that those landowners are "simply asserting rights that are well established." He points out, "They are exercising their rights as citizens. To be sued for that is unfortunate. It's like a burglar entering your house and suing you because you called the police."

Noting that the plaintiffs are asking the supreme court to reverse its previous rulings, he doubts that the court will have much interest in considering the case.

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LOADING LOBSTER TRAPS onto his new boat, U Wait N Sea, is Jesse McPhail on May 10 at the Eastport breakwater. (Don Dunbar photo)



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