



NEW ENGLAND BACKCOUNTRY HUNTERS AND ANGLERS

February 22, 2021

To Chairman Craven and the members of the House Judiciary Committee

Re: BHA Support of RI - 2021 – H5469 Willful Trespass Exemption for Shoreline Access

As the fastest growing organization of hunters and anglers in the nation, Backcountry Hunters & Anglers (BHA) seeks to ensure North America's outdoor heritage of hunting and fishing in a natural setting. Our members consider protecting and expanding access to public lands and water a top priority, recognizing that access is one of the most important factors to our participation in, and the perpetuation of, our outdoor traditions.

With these things in mind, the New England Chapter of BHA supports H5469, which would put the right of passage along the shore for fishing, foraging and other purposes that is granted in the Rhode Island Constitution in to clear and practical terms. We would also like to recognize and thank Rep. Cortvriend and the bipartisan roster of co-sponsors who represent constituents in the coastal communities of Portsmouth, Newport, North Kingstown, Narragansett, South Kingstown, Charlestown, Westerly and New Shoreham for introducing this legislation.

As a concept, Public Trust Doctrine asserts that certain resources like air, running water and the shores of the sea are owned collectively by the people, who entrust their management to the State. In Rhode Island, Public Trust Doctrine is codified in the Article 1, Section 17 of the Rhode Island Constitution, stating:

"The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges to the shore, to which they have been heretofore entitled under the charter and usages of this state, including but not limited to fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore"

Unfortunately, the language in Rhode Island's Constitution does not clearly define where the boundary that this granted right can be practiced lies. The most recent judicial consideration of the issue was *State v. Ibbison* (1982), where a group was arrested for violating a municipal code that prohibits knowingly entering the land of another while they were collecting trash below the most recent high water mark in Westerly, Rhode Island. Regrettably, the Supreme Court of Rhode Island's finding did not focus on determining the boundary where rights granted under Article 1 Section 17 could be exercised, but rather on determining that the ownership boundary for the State's property occurs at the "mean high tide line" as determined by the arithmetic average of high-water heights over an 18.6 year Metonic cycle. Ultimately, the court dismissed the conviction on the grounds that the defendants could not have reasonably known the location of the boundary line, so they did not knowingly trespass.

Clearly, using the “mean high tide line” as defined in State v. Ibbison as a boundary for the public’s right to the access the shore is problematic for a couple reasons. Anyone who has spent time near the shore, especially the sandy shores along Rhode Island’s southern exposure, knows that our beaches are dynamic and ever-changing, and without sophisticated historical knowledge and geological surveying equipment there is no reasonable way to determine in real time where the “mean high tide line” actually lies. Further, with the expectation that the sea level will rise slowly and for an extended period of time, such a running average would place the boundary perpetually behind the current tide and likely underwater, which was not the intention of Article 1 Section 17.

We believe that H5469 adequately addresses these issues by defining the boundary where rights granted through Article 1 Section 17 can be practiced in fair and practical terms through the establishment a public easement of 10 feet from the most recent observable high tide line. Passing H5469 will ensure that all Rhode Islanders, not only those who are wealthy or fortunate enough to own beachfront property, are able to exercise their right to fish, forage and enjoy our 400 miles of shoreline within a clear and observable boundary, and will help to mitigate conflicts that might otherwise arise due to the lack of a clear boundary for these activities.

Thank you for your consideration of our position.

Sincerely,

Michael Woods
Saunderstown, RI 02874
rhodeisland@backcountryhunters.org

Chair, New England Chapter Board
Backcountry Hunters and Anglers