

**MAINE SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT**

**LAW DOCKET NO.: WAS-17-142**

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**KENNETH W. ROSS, CARL E. ROSS and ROQUE ISLAND  
GARDNER HOMESTEAD CORPORATION,  
Plaintiffs / Appellees,**

**v.**

**ACADIAN SEAPLANTS, LTD.,  
Defendant / Appellant.**

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**ON APPEAL FROM THE MAINE SUPERIOR COURT**

**BRIEF OF *AMICUS CURIAE*  
CONSERVATION LAW FOUNDATION**

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## **STATEMENT OF INTEREST OF AMICUS CURIAE**

The Conservation Law Foundation (CLF)<sup>1</sup> is a non-profit, member-supported public interest environmental advocacy organization with more than a half-century of experience using the law, science, markets and policy to address the environmental problems that threaten the people, natural resources and communities of Maine and New England. CLF has developed a strong region-wide Ocean Conservation Program, with attorneys, economists and policy-makers engaged in advocacy concerning, among other topics, sustainable management of marine resources, conservation of unique ocean and shoreline habitats and protection of marine resources from the impacts of climate change. In Maine, CLF's advocates have appeared in court and before the legislature on issues related to public uses of the intertidal zone, testifying at the legislature on the issue of rockweed harvesting, and appearing as an intervenor-defendant in the matter of *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989) and as an *amicus curiae* in the matter of *Almeder v. Kennebunkport*, 2014 ME 139, 106 A.3d 1099. This *amicus curiae* brief seeks to assist the Court by addressing the nature of rockweed harvesting, rockweed's critical role as a habitat for many other marine organisms,

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<sup>1</sup> CLF files this brief *amicus curiae* pursuant to Rule 9(e)(1) of the Maine Rules of Appellate Procedure, which provides that "a brief of an *amicus curiae* may be filed only if accompanied by written consent of all parties or by leave of the Law Court." CLF has obtained the written consent of all parties. See Exhibits 1 and 2.

and how the Superior Court's decision will positively impact the practice and regulation of rockweed harvesting.

## **INTRODUCTION**

Low tide along much of the Maine coast does not reveal stretches of sandy beach but rather swaths of barnacled rocks covered in slippery brown seaweed. Commonly known as rockweed and scientifically classified as *Ascophyllum nodosum*, walking on rockweed can be treacherous, as anyone who has tried it can attest. What most people don't realize is that this seemingly unexceptional marine plant is a critical habitat for many of Maine's iconic marine resources, including juvenile lobsters and crabs, shellfish like mussels, clams and periwinkles, fish from cod to herring to flounder and seabirds such as eider ducks and osprey. At low tide, when the rockweed lies flat on the rocks, it provides a refuge from temperature extremes, light and predators. At high tide, when its long fronds or thalli extend up into the water column, it provides a complex canopy where fish feed and shelter from predators, water currents are slowed allowing larvae to settle, and juvenile lobsters, crabs and other crustaceans and shellfish can take shelter. The value of this marine habitat cannot be overstated.

Rockweed also has a commercial value, largely as an addition to fertilizers and animal feed products. The commercial harvesting of rockweed has until now been a two-way conversation, between harvesters like Appellant and the State's

Department of Marine Resources (DMR). Upland property owners such as Appellees who own the intertidal area where most rockweed is found have largely been excluded from having any formal role as to when, where and how rockweed should be harvested.

In finding that the rockweed growing in the intertidal area is exclusively owned by upland landowners such as Appellees and that the harvesting of rockweed does not fall within the public's right to fish, fowl and navigate in the intertidal zone, the Superior Court followed this Court's relevant precedent and used a common sense definition of fishing. This court should affirm that decision in order to provide clarity to landowners, harvesters and the DMR.

### **STATEMENT OF PROCEDURAL HISTORY AND FACTS**

CLF adopts the Procedural History as set forth by Appellant in its Brief, pp. 7-9. CLF also adopts the Joint Statement of Material Facts filed by Appellant and Appellees with the Superior Court. Appendix, A. 028 – A. 034.

### **STATEMENT OF ISSUE**

Did the Superior Court properly find that the harvesting of rockweed in the intertidal zone is an activity that does not constitute “fishing, fowling or navigating” and therefore requires permission of the owner of the intertidal area where the rockweed is located? As explained below, CLF urges this Court to answer this question “yes.”

## **SUMMARY OF ARGUMENT**

The Superior Court’s decision that rockweed harvesting does not fall within the public’s right to fish in the intertidal zone is consistent with this Court’s precedent and an entirely practical and workable approach to the issue. As *amicus curiae*, CLF shares the recognition by the Superior Court that the briefs and arguments presented by counsel for the Appellant and the Appellees were “very well put together” and “equally persuasive.” A. 121. Appellant’s brief submitted to this Court is of a similar quality and CLF expects the same of Appellee’s. As such, CLF’s focus as *amicus curiae* is to assist the Court in its consideration of this appeal by highlighting the commercial and ecological importance of rockweed as a habitat for many fish, shellfish and seabirds and to address any concerns that may arise concerning the future regulation of rockweed harvesting should the Court uphold the Superior Court’s conclusion that “rockweed/seaweed growing in the intertidal zone is private property owned exclusively by the fee owner, and is not owned by the State in trust for the public.” A. 010.

## **STANDARD OF REVIEW**

This Court’s review of the Superior Court’s decision on Cross Motions for Summary Judgment is *de novo*. *City of Bangor v. Penobscot County*, 2005 ME 35, ¶¶ 6-8, 868 A.2d 177.



## ARGUMENT

### **I. Harvesting Rockweed, a Marine Plant, is Not Fishing.**

The Superior Court correctly concluded that the harvesting of rockweed does not “fall readily within the aquatic rights of ‘fishing, fowling or navigation.’”

A. 008. (citation omitted). Two bases for that conclusion warrant emphasis.

First, as a matter of law, the Superior Court correctly found that the relevant precedent governing this case is *Hill v. Lord*, 48 Me. 83 (1861) and that the subsequent decision in *Marshall v. Walker*, 93 Me. 532 (1900) did not overrule *Hill*. A. 010. CLF particularly notes and supports the Superior Court’s analysis of the importance of *stare decisis*, which follows the concurring opinion of Justice Levy in *McGarvey v. Whittredge*, 2011 ME 97, ¶¶ 63-67, 28 A.3d 620.

Second, the Superior Court’s analysis of whether rockweed harvesting falls within the confines of the public’s right to fish, fowl and navigate in the intertidal zone is equally sound. It is of no import whether rockweed is a marine plant or a terrestrial plant – it is a plant that is rooted in one spot, sometimes for decades; uses the same nutrients, water and oxygen, to grow that other plants and trees do; and creates a canopy that serves as a habitat area for numerous other species, as plants and trees do. *See generally*, A. 030-032, ¶¶ 11-24. A fundamental difference between rockweed and sea worms, shellfish, crustaceans and fish is that the latter do not provide habitat for other species – indeed, they depend on the habitat

provided by rockweed. Cutting rockweed from the rock and substrate to which it is attached is no more fishing than harvesting a hay field with a scythe is hunting or trapping the animals that nest in the field. Even if “fishing” were to be given the “sympathetically generous interpretation” as suggested by the Court in *Bell*, 557 A.2d 168, 173 (Me. 1989), that interpretation must still be tethered to the term fishing, as noted by Justice Levy in *McGarvey*. 2011 ME ¶ 71. Cutting rockweed in Maine’s intertidal zone is simply not fishing.

## **II. Rockweed Provides an Essential Habitat for Commercially and Ecologically Valuable Species in Maine’s Intertidal Zone.**

The beds of rockweed that grow on Maine’s rocky coast act like underwater forests and provide habitat, shelter and feeding opportunities to dozens of commercially and ecologically important species of fish, invertebrates and birds, including American lobster, Atlantic cod and blue mussels. While rockweed plants may relatively quickly recover their pre-harvest biomass following harvesting, they do not so quickly recover the complex, tall, forest-like structure that underlies their ecological and habitat value. Many species that rely on rockweed habitat are sensitive to habitat loss, and unsustainable commercial harvesting of rockweed destabilizes some of Maine’s most valuable fisheries.

### **A. Rockweed Beds in the Intertidal Zone Resemble and Perform a Similar Ecological Role to Complex Old-Growth Forests and Wetlands.**

Rockweed (*Ascophyllum nodosum*) is a brown seaweed, or macroalga, that

dominates much of Maine’s rocky coast. *See* Joint Statement of Material Facts, A. 030; Peter Forster Larsen, *The Macroinvertebrate Fauna of Rockweed (Ascophyllum nodosum)–Dominated Low-Energy Rocky Shores of the Northern Gulf of Maine*, 28 J. COASTAL RES. 36 (2012). While differing from plants in terms of individual anatomy, *see* A. 031, rockweed beds perform an analogous role to old-growth forests in the intertidal zone, providing habitat, shelter and feeding opportunities to a wide variety of species.

Rockweed grows in a complex branching pattern and reaches from two to over six feet tall when standing at high tide. *See id.* at 030–31. Rockweed beds resemble “vast underwater forests.” Mitchell W. Feeney, *Regulating Seaweed Harvesting in Maine: The Public and Private Interests in an Emerging Marine Resource Industry*, 7 OCEAN & COASTAL L. J. 329, 330 (2002). *See also* Robin Hadlock Seeley & William H. Schlesinger, *Sustainable seaweed cutting? The rockweed (Ascophyllum nodosum) industry of Maine and the Maritime Provinces*, 1249 ANN. N.Y. ACAD. SCI. 84, 85 (2012) (“*Ascophyllum* plants are analogous to trees, and rockweed beds are the underwater equivalent of old-growth forests.”). These forests are “distinct 3-dimensional habitats that provide settlement, refuge, and foraging opportunities for a wide range of species.” Allison L. Schmidt et al., *Ecosystem structure and services in eelgrass *Zostera marina* and rockweed *Ascophyllum nodosum* habitats*, 437 MARINE ECOLOGY PROGRESS SERIES 51, 63

(2011). *See also* A. 031. Though individual rockweed plants have holdfasts instead of terrestrial root structures, *see* A. 031, rockweed communities resemble terrestrial forests in their structural contribution to the intertidal zone along the Maine coast.

**B. Rockweed Forests Provide Crucial Habitat to Dozens of Commercially and Ecologically Valuable Fish, Shellfish and Bird Species Along Maine’s Coast.**

Seaweeds like rockweed “do not merely influence the habitat—to a large extent they *are* the habitat.” Christopher S. Lobban et al., *SEAWEED ECOLOGY AND PHYSIOLOGY* 71 (2d ed. 1997). Indeed, rockweed beds have long been recognized as vital habitats for a variety of species. *See, e.g.*, John Colman, *On the faunas inhabiting intertidal seaweeds*, 24 *J. MARINE BIOL. ASS’N U.K.* 129 (1940). At low tide, the plant’s long and complex fronds, or thalli, lie flat on the rocks and provide essential shelter to marine species from heat, cold, light, desiccation and predation. *See* Seeley & Schlesinger, 1249 *ANN. N.Y. ACAD. SCI.* at 87–88; A. 032. At high tide, the thalli float, forming a complex canopy structure in which birds hunt and juvenile fishes feed and shelter from predators. *See* Seeley & Schlesinger, 1249 *ANN. N.Y. ACAD. SCI.* at 88. The tall and branching thalli also serve to slow water currents and facilitate the settlement and establishment of barnacle and mussel larvae. *See id.*

In Maine, over 100 taxa of invertebrates, including lobsters, clams, periwinkles and snails; 34 species of fish, including cod, pollock, herring, flounder

and eel; and numerous protected birds, including eider ducks, great blue herons, common loon and osprey rely on rockweed beds in some way. *See id.* at 86–88. Many of these species are of vital importance to Maine’s coastal economy. American lobster, for instance, which are usually nocturnal, will shelter during the day in rockweed beds, where they are protected from heat and predators, and where they feed both on other species found in rockweed beds and on rockweed itself. *See* Schmidt et al., 437 MARINE ECOLOGY PROGRESS SERIES at 64. Juvenile Atlantic cod, common periwinkles, blue mussels, soft-shell clams, and bivalve spat all also shelter from predators, light, heat, cold and rapid current in rockweed beds. *See id.*; Seeley & Schlesinger, 1249 ANN. N.Y. ACAD. SCI. at 88–89. Indeed, one study found that ten of the most common species in rockweed forests were “significantly affected” by rockweed harvesting. *See* Me. Dep’t Marine Res., FISHERY MANAGEMENT PLAN FOR ROCKWEED (*ASCOPHYLLUM NODOSUM*) 13 (2014). *See also* Schmidt et al., 437 MARINE ECOLOGY PROGRESS SERIES at 65 (“Our results emphasize the vulnerability... especially [of] rockweed communities to disturbances....”). These populations are vitally important to Maine’s commercial fisheries, and threats to their habitat will impact those fisheries’ long-term sustainability.

Many non-commercial but ecologically-important species also rely on rockweed forests for habitat. Eider ducklings, for instance, use the rockweed

canopy both to shelter from predators and as a critical food source. Especially in their first two weeks of life, when abundant food is critical but they cannot yet dive, eider ducklings rely on tall, floating rockweed to carry invertebrates near the surface, where the ducklings can reach them. *See* Diana J. Hamilton, *Feeding Behavior of Common Eider Ducklings in Relation to Availability of Rockweed Habitat and Duckling Age*, 24 WATERBIRDS 233, 234 (2001). Eider ducklings and commercial harvesters both target the rockweed canopy, *see* Seeley & Schlesinger, 1249 ANN. N.Y. ACAD. SCI. at 92, but while “shorter, bushier plants... may provide adequate habitat for invertebrates,” this is “of little benefit to ducklings that need access to rockweed at the surface.” Hamilton, 24 WATERBIRDS at 240. Other non-commercial, ecologically-important species inhabiting intertidal rockweed forests include amphipods (food for pollock, herring, shorebirds, and ducks) and mysid shrimp (food for fish like cod, herring, and longhorn sculpin). *See* Seeley & Schlesinger, 1249 ANN. N.Y. ACAD. SCI. at 89.

Rockweed forests do more than shelter individual lobsters, cod or ducklings, though. Loss or degradation of these complex habitats may contribute to the depletion and non-recovery of commercial fish stocks. Indeed, unsustainable harvesting of critical habitat like rockweed “could lead not only to widespread changes in ecosystems, but also to the collapse of traditional fisheries.” *Id.* at 90. *See also* Schmidt et al., 437 MARINE ECOLOGY PROGRESS SERIES at 52; A. Randall

Hughes et al., *Associations of concern: declining seagrasses and threatened dependent species*, 7 FRONTIERS IN ECOLOGY & ENV'T 242 (2009); Heike K. Lotze & Inka Milewski, *Two Centuries of Multiple Human Impacts and Successive Changes in a North Atlantic Food Web*, 14 ECOLOGICAL APPLICATIONS 1428, 1428 (2004).

Research studies support these concerns. Where rockweed has been removed, fish biomass can be significantly reduced. See Robert Black & Robert J. Miller, *Use of the intertidal zone by fish in Nova Scotia*, 31 ENVTL. BIOL. OF FISHES 109, 116 (1991). Two years after one heavy rockweed cutting experiment, “overall species richness declined and did not recover.” Seeley & Schlesinger, 1249 ANN. N.Y. ACAD. SCI. at 94 (citing Jill Coldren Fegley, *Ecological implications of rockweed, *Ascophyllum nodosum* (L.) Le Jolis, harvesting* (May 11, 2001) (unpublished Ph.D. dissertation, University of Maine) (on file with ProQuest Dissertations Publishing)). Long-term studies also indicate that, even twenty years after initial disturbance of a rockweed plot and the recovery of its forest-like structure, “the understory community [shows] no signs of reverting to its original pre-disturbance state.” S.R. Jenkins et al., *Long term effects of *Ascophyllum nodosum* canopy removal on mid shore community structure*, 84 J. MARINE BIOL. ASS'N U.K. 327, 329 (2004). See also A. Ingólfsson & S.J. Hawkins, *Slow recovery from disturbance: a 20 year study of *Ascophyllum* canopy clearances*, 88

J. MARINE BIOL. ASS'N U.K. 689 (2008).

Rockweed forests, in short, are a vital habitat for valuable marine and coastal species all along Maine's coast, and their conservation is necessary to support these fisheries. This conservation requires attention not only to rockweed's potential to recover from harvesting in terms of sheer biomass, but its potential to recover the tall, complex forest structure that shelters and provides food for dozens of fish, invertebrate and bird species. While some rockweed harvesting may be sustainable, it requires close management and oversight to ensure the continued health of Maine's coastal and fishing economies built on top of these vibrant ecosystems.

**C. While Rockweed Biomass Can Quickly Recover from Harvesting, Harvested Beds do not Quickly Recover their Complex, Forest-Like Structure.**

Rockweed's "complex floating, three-dimensional structure" underlies its important ecological function. Larsen, 28 J. COASTAL RES. at 36. This structure, however, does not quickly recover from commercial harvesting. Most research into the sustainability of rockweed harvesting has focused solely on rockweed beds' recovery of biomass but not rockweed's structure. One widely-cited study authored by scientists employed by Appellant Acadian Seaplants found that, of seven test plots, one had recovered 85 percent of its preharvest biomass after one year, another plot showed "total recovery" of biomass, and a third showed a 52 percent



increase in biomass. See Raul A. Ugarte et al., *Changes in the brown seaweed Ascophyllum nodosum (L.) Le Jol. Plant morphology and biomass produced by cutter rake harvests in southern New Brunswick, Canada*, 18 J. APPLIED PHYCOLOGY 351, 354–55 (2006). See also Raul Ugarte & Glyn Sharp, *Management and production of the brown algae Ascophyllum nodosum in the Canadian maritimes*, 24 J. APPLIED PHYCOLOGY 409 (2012) (surveying the management history of rockweed harvesting and measuring yields and regrowth only in terms of biomass). The Acadian Seaplants team used these examples from three of its seven test plots to argue not only that rockweed may be sustainably harvested, but that harvesting in fact increases rockweed productivity and so benefits intertidal ecosystems.<sup>2</sup> See Ugarte et al., 18 J. APPLIED PHYCOLOGY at 358.

But even if that conclusion were correct, its focus is only on how much rockweed biomass grows back after harvesting and not on the structure of how the rockweed grows back. The answer to that question is that harvested rockweed tends to regrow not vertically, in the long, tall thalli that make up the “underwater forest,” but laterally, creating dense and bushy structures. As the Acadian Seaplants study does note, the “enhance[d] growth” driven by harvesting is “of new laterals,” and that “overall structural complexity is altered.” *Id.* at 358, 357.

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<sup>2</sup> Two of the remaining test plots (numbers 2 and 4) were control plots. The authors do not appear to have included the final two plots (1 and 5) in their results. See Ugarte et al., 18 J. APPLIED PHYCOLOGY at 356, fig.7.

*See also* Seeley & Schlesinger, 1249 ANN. N.Y. ACAD. SCI. at 95 (“after cutting, plants are shorter (e.g., Maine’s 16” [40 cm] regulation) and produce numerous lateral branches, creating a much shorter rockweed ‘bush.’”). Another study found that even after two years of regrowth, “plants in control plots were significantly longer than the plants in either of the cut plots, indicating a lack of recovery to pre-existing conditions.” Me. Dep’t Marine Res., FISHERY MANAGEMENT PLAN FOR ROCKWEED (*ASCOPHYLLUM NODOSUM*) 9 (2014). In other words, while harvested rockweed beds may recover relatively quickly in terms of sheer biomass, they do not recover so quickly the vertical, forest-like structure that provides essential habitat to dozens of valuable fish, shellfish and bird species.

**III. The State’s Management and Regulation of Rockweed Harvesting will be Enhanced, not Restricted, by a Determination that Rockweed Growing in the Intertidal Zone is Property Owned by Upland Property Owners.**

Maine’s DMR currently regulates rockweed harvesting pursuant to a combination of statutes and regulations. *See generally* A. 033. This regulatory regime will not be restricted by a determination that rockweed growing in the intertidal zone is property owned by the upland property owners. Rather, because upland owners will have a vested interest in the rockweed growing in the intertidal zone, DMR’s management and regulation of the critical habitat resource will be enhanced. Landowners with a vested interest in the resource and its sustainable harvesting will supplement DMR’s current efforts to monitor rockweed harvesting,

which are limited by budget constraints, and harvesters will be motivated to develop relationships with landowners to ensure the sustainable harvesting of the resource. Further, there is clear precedent for regulation of a habitat resource that is enhanced, not limited, by private ownership of that resource. For example, both wetlands and wildlife protection zones are ecologically important habitats often located on private property but successfully protected, managed and/or developed under state regulation.

**A. The Scope of the Department of Marine Resources' Management and Regulation of Rockweed Harvesting in Maine.**

The harvesting of rockweed along Maine's coast is currently governed by a number of laws and regulations. Permitting requirements for the harvesting, possession, shipping, transport or selling of seaweed are set forth at 12 M.R.S. § 6803 ("Seaweed permit") and § 6803-A ("Seaweed buyer's license"), which apply statewide. And harvesting restrictions are set forth in DMR regulations in 13-188 CMR Ch. 8 ("Landings Program") and 13-188 CMR Ch. 29 ("Seaweed"), which apply statewide. In particular, Ch. 29, § 29.05(A)(1) requires that rockweed be harvested so that "the lowest branches shall remain undisturbed and attached to the main stalk," and § 29.05(A)(2) further requires that rockweed be harvested so that "a minimum of 16 inches of the rockweed remain above the holdfast."<sup>3</sup> Under

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<sup>3</sup> For purpose of this *amicus curiae* brief, CLF takes no position on the merits of the standards set by Chapter 29.

these regulations, where harvesting takes place is not specified and owners of the intertidal zone play little to no role in the process.

The exception to that situation is in Cobscook Bay, where as part of a multi-year public process, additional requirements were developed to apply to the harvesting of rockweed. Under 12 M.R.S. § 6803-C, Cobscook Bay is divided into 14 management sectors and harvesting is prohibited in certain areas. Harvesters must submit annual harvest plans that detail the management sectors proposed for harvest, the total rockweed biomass in the proposed sector, the amount of biomass proposed to be harvested, the harvest methods and description of how marine organisms harvested with the rockweed will be managed. Further, under the statute, the total biomass removed in a harvest management sector may not exceed 17% of the harvestable biomass that is eligible to be harvested annually. The intertidal zone in Cobscook Bay is the only area on the Maine Coast where these additional requirements apply to rockweed harvesting.

**B. The Department of Marine Resources' Management Regulation of Rockweed Harvesting is Enhanced, Not Restricted, by Ownership of Intertidal Rockweed by Upland Property Owners.**

To date, the State has pointedly not taken a position with respect to the ownership of rockweed growing in the intertidal zone.<sup>4</sup> To the extent the State

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<sup>4</sup> DMR's "Marine Harvesting 2017 – Commercial Harvesting Application" states: "Attention Seaweed Harvesters A DMR license authorizes the holder to harvest seaweed in compliance with Maine regulations governing cutting length and other conservation measures, from any area where seaweed may legally be taken. The holder of this license and any property owners must be aware that Maine's common law (meaning state law developed through

takes the position in this case that private ownership of intertidal rockweed would restrict DMR's management and regulation of rockweed harvesting and/or eliminate public access to the intertidal zone, such claims should be rejected for several reasons.

First, private ownership of rockweed growing in the intertidal zone will provide the upland property owners with a vested interest in the long-term viability and sustainability of this critical habitat resource. These landowners will therefore have an incentive to ensure that rockweed is sustainably harvested. To that end, rockweed harvesters will be motivated to develop relationships and trust with landowners to ensure the continued harvesting of the resource. As a result, landowners will be able to supplement, not detract from, DMR's current efforts to regulate rockweed harvesting, which are consistently hampered by budget constraints limiting the DMR's ability to inspect and ensure sustainable harvesting requirements are being satisfied.

Second, private ownership of rockweed growing in the intertidal zone will not eliminate public access to rockweed beds. The public can still motor, sail or paddle over the rockweed; swim, snorkel or scuba through the rockweed; harvest

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court decisions) is not clear as to whether seaweed located in the intertidal zone (defined as the shores, flats or other land between the high and low water mark) is owned by the public generally or by the upland property owner. Therefore, since ownership of the seaweed in the intertidal zone is an unsettled question that only Maine courts can definitively answer, the State of Maine takes no position on (1) whether the public may harvest seaweed from those areas without interfering with the private property rights of the upland owner or (2) whether the upland property owners may prohibit the public harvest of seaweed in those areas." (Emphasis added.)

seaworms, clams, crabs and mussels from rockweed beds; and hunt for birds over the beds.

Third, there is clear precedent for regulation of a habitat resource that is enhanced, not limited, by private ownership of that resource. In Maine, wetlands and vernal pools are ecologically important habitats which are often located on private property, but which are successfully managed and protected by municipalities and by the Department of Environmental Protection (“DEP”) pursuant to local ordinances and state laws and DEP regulations. *See, e.g.*, 38 M.R.S. §§ 480-A, 480-I, 480-X; *see also* 06-096 CMR Ch. 310. Similarly, wildlife protection zones, such as deer wintering areas, are ecologically significant areas often located on private land, but which are successfully managed and protected by municipalities and by the Land Use Planning Commission (“LUPC”) pursuant to local ordinances and state law and regulations. *See, e.g.*, 12 M.R.S. § 685-A; *see also* 01-672 CMR Ch. 1 and 01-672 CMR Ch. 10; *see also Maine Land Use Regulation Commission v. White*, 521 A.2d 710, 711 (Me. 1987) (affirming trial court’s denial of petition challenging penalties assessed for violations of LUPC’s zoning that regulated timber harvesting for protection of deer wintering areas). Wetlands, vernal pools and deer wintering yards, like rockweed beds, are critical habitat for many other species and they are sustainably managed by a combination of owners, developers/harvesters and the State.

**CONCLUSION**

For all these reasons, Conservation Law Foundation urges this Court to affirm the Supreme Court's decision.

Respectfully submitted,

CONSERVATION LAW FOUNDATION,

By its attorney,

A handwritten signature in blue ink that reads "Sean Mahoney". The signature is written in a cursive style with a large initial "S".

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**CERTIFICATE OF SERVICE**

I, Sean Mahoney, hereby certify that two copies of this Brief of *Amicus Curiae* Conservation Law Foundation were served upon counsel at the address set forth below by first class mail on August 4, 2017:

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