

SEA GRANT
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If you own waterfront property, do you have a special right or claim to the fish in the water adjacent to your property? What about access to the water?

These questions usually arise from a misunderstanding of riparian rights. Riparian rights are held by waterfront property owners. In Alabama, there is no law specifying riparian rights (with one exception). Instead, these rights are based in English common law and are defined in Alabama through court decisions. Basically, riparian rights encompass the principal that waterfront property owners have the right to gain access or improve access to the water fronting their property. However, lands below the tideline, (water bottoms), the water, and the living resources in the water belong to the state of Alabama and are held in trust for all the people of Alabama. Consequently, while riparian owners possess a special relationship with the water, they may not engage in activities that lessen the public interest in its land or water. In plainer English, the state recognizes the right of property owners to build piers and docks, but looks after the public interest by requiring permits from state and federal agencies.

The one exception is an 1872 Alabama statute which addresses the right of waterfront property owners to plant and gather oysters to a distance of 600 yards from shore. This right does not confer ownership of the water bottom to waterfront owners. The ownership of these water bottoms and the fish and shrimp on them is retained by the

state for the enjoyment of all citizens. Furthermore, the right does not extend to natural or public reefs.

The right to plant and harvest oysters is often referred to as “riparian rights.” But, in reality is a special case of the more general riparian right discussed above. In order for an owner to exercise his right to plant oysters, he must have the bottom surveyed and register the survey with the Marine Resources Division. The surveyed area must be marked according to regulations and the waters must be approved for shellfish harvest by the public health department. Since planting shells involves dumping materials in navigable waters and marking the area which usually involves the placement of pilings, a Corps of Engineers permit is also required.

In summary, the state owns the tidal water bottoms but recognizes the rights of waterfront owners to access. The right of access does not confer any special right to the use and enjoyment of public resources such as fish and shellfish. The state has further granted a specific right to plant and gather oysters under certain conditions.