



To: Rusty Grice, Oyster Aquaculture Business Specialist, Mississippi-Alabama Sea Grant

From: Siena Fouse, Ocean and Coastal Law Fellow

Re: Ownership of Land Under Navigable Waters in Alabama (NSGLC-25-05-02)¹

Date: May 23, 2025

Advisory Summary

Mississippi-Alabama Sea Grant contacted the National Sea Grant Law Center to request information on using Spanish land grants to prove private ownership of water bottoms in Alabama. A riparian property owner claims to own the water bottom through a Spanish land grant and argues this exempts them from the typical permitting process to grow oysters. This advisory memo first discusses rights to submerged land in Alabama and the oyster aquaculture permitting process. Then it reviews cases of Spanish land grants under navigable waters.

Introduction

Under the equal footing doctrine, new states are entitled to the sovereignty and jurisdiction over all the territory within its limits, subject to the common law, to the same extent as the original thirteen states in the U.S.² Because original states had property rights in the navigable waters within their territory, Alabama also gained control over its navigable waters upon statehood under the equal footing doctrine.³

State owned submerged lands in Alabama

Under Alabama state law, all of the beds and bottoms of the rivers, bayous, lagoons, lakes, bays, sounds, and inlets within the jurisdiction of the State of Alabama are the property of the State of Alabama to be held in trust for the public.⁴ The Alabama Department of Conservation and Natural Resources (ADCNR) oversees use and management of state owned submerged lands.⁵ State owned submerged lands includes tidal lands, sand bars, and shallow banks, to which the State of Alabama acquired title when or after it became a state in 1819, and which have not been previously conveyed or alienated.⁶ These lands are located waterward of the ordinary low water

¹ This product was prepared by the National Sea Grant Law Center under award number NA24OARX417C0025-T1-01 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the authors and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce.

² *Pollard v. Hagan*, 44 U.S. (3 How.) 212, 219 (1845).

³ *Mobile v. Eslava*, 9 Port. 577, 604 (Ala. 1839).

⁴ ALA. CODE § 9-12-22 (2025).

⁵ ALA. ADMIN. CODE r. 220-4-.09 (2025).

⁶ *Id.*

line beneath navigable non-tidal streams or the mean high tide line beneath tidally-influenced waters.⁷

In Alabama, owners of property abutting navigable waters have riparian rights that include the ability to grow oysters in the water up to 600 yards from their land and to build docks.⁸ Riparian owners do not actually own the submerged land, they just have rights regarding its use.⁹ However, a riparian easement is required for all revenue generating/income-related activities and docks over a certain size occurring on state owned submerged lands.¹⁰ Both riparian and non-riparian property owners can apply for shellfish aquaculture easements to conduct commercial shellfish aquaculture activities on state owned submerged lands and the overlying water column.¹¹

Spanish land grants

Prior to statehood, Alabama was under the control of different colonial powers including Spain. To the U.S. Supreme Court, it was settled doctrine that the United States had acquired the land west of the Perdido River by the treaty of 1803 with France.¹² However, the Spanish government continued to exercise jurisdiction in the southeast, including over the city of Mobile, for around nine years after the treaty.¹³ Disputes arose over land grants issued by Spain during that time. While the Court determined that all grants made by Spain west of the Perdido River after the United States acquired the land in 1803 were void, Congress passed legislation in 1812 to appoint a commissioner to report on validity of land grant claims from both before and after 1803.¹⁴ Under this and later acts of Congress, individuals asserting ownership claims derived from either the French, British, or Spanish governments could present their claims to commissioners and if favorably reported on by the commissioners to Congress, receive a grant for the claimed land.¹⁵

Under Spanish law, the king had the right to grant to a subject the soil under navigable waters.¹⁶ In the case of *Pollard v. Hagan* in 1845, it was argued that the United States had succeeded to all the rights and powers of the King of Spain, including the right to grant land under navigable waters.¹⁷ The U.S. Supreme Court determined that no, the King of Spain could not impart to the United States any of his royal prerogatives and the United States was subject to the laws of its own government.¹⁸ The right of eminent domain over the shores and the soil under the navigable

⁷ *Id.*

⁸ ALA. CODE § 9-12-22 (2025); ALA. CODE § 33-7-50 (2025).

⁹ ALA. CODE § 9-12-22 (2025).

¹⁰ ALA. ADMIN. CODE r. 220-4-.09 (2025).

¹¹ ALA. ADMIN. CODE r. 220-4-.17 (2025).

¹² *Lessee of Pollard v. Files*, 43 U.S. (2 How.) 591, 603 (1844).

¹³ *Id.*

¹⁴ *Id.* at 602–03.

¹⁵ *Id.* at 601, 604–05.

¹⁶ *Pollard v. Hagan*, 44 U.S. (3 How.) 212, 225 (1845).

¹⁷ *Id.*

¹⁸ *Id.*

waters belongs exclusively to the states within their respective territorial jurisdictions, and thus, Congress did not have the right to transfer to a citizen the title to the shore and soils under navigable waters.¹⁹

In a later case, *Shively v. Bowlby* in 1894, the U.S. Supreme Court recognized an exception to this rule. In *Shively*, the Court held that the federal government had the authority to make a pre-statehood grant of land below the high-water mark of navigable waters to a private party when necessary to perform international obligations or to effect the improvement of such lands for the promotion and convenience of commerce with foreign nations and among the several states.²⁰ But these circumstances have been noted to be extremely rare.²¹

Significantly, more recently in *Phillips Petroleum Co. v. Mississippi* in 1988, claimants with record title to lands under a bayou traced their claims back to pre-statehood Spanish land grants.²² The titleholders and their predecessors had paid taxes on those lands for over a century.²³ However, the State of Mississippi claimed that it acquired a public trust interest in the lands at the time it entered the Union in 1817.²⁴ The U.S. Supreme Court held that the land at issue became property of the State of Mississippi upon its admission to the Union.²⁵ This reaffirmed the Court's longstanding precedents establishing that the States, upon entering the Union, were given ownership over all lands beneath waters subject to the tide's influence.²⁶

Conclusion

Alabama state law establishes that the state owns submerged lands in navigable waters. Case law suggests that if there had been a pre-statehood grant of land under navigable water, it would have been overridden by Alabama's sovereignty over submerged land under navigable waters upon statehood except in very rare circumstances. Therefore, it would be extremely difficult for a property owner to assert a legal claim of ownership of land submerged under navigable waters even if the title could be traced back to a Spanish land grant. Riparian property owners in Alabama do have some rights to use land under navigable waters abutting their property without state permission. However, if the riparian property owner intends on growing oysters to generate revenue or as an income-related activity, then they will likely be required to get an easement from ADCNR.

¹⁹ *Id.* at 222–23.

²⁰ *Shively v. Bowlby*, 152 U.S. 1, 48 (1894).

²¹ *Gunderson v. State*, 90 N.E. 3d 1171, 1173 (Ind. 2018).

²² *Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469, 472 (1988).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 484.

²⁶ *Id.*