



Beaches of Jamaica: Access and Rights

The Editor, Sir:

We write in response to two articles appearing in the Gleaner over the past week under the byline of Professor Carolyn Cooper – *No Beach for Local Tourist*, and Ms Diana McCauley – *The problem of beach exclusion*. Both articles highlighted a real resource management challenge Jamaica has faced over the past 50 years, wherein access to, and use of a seemingly common and freely available natural resource the beach, is increasingly being denied to a wide number of Jamaicans.

It is unquestionable that the beaches are of great value to Jamaica in social, environmental and economic terms. The country's beaches are also world renowned. The enjoyment of the beach and beach facilities must be an integral part of the life of the citizens of Jamaica. The coastline of Jamaica is approximately 795 km (494 miles) long, with approximately 30% (238.5 km) being characterized as sandy beach.

In recent years there has been significant development of Jamaica's coastal areas related to the tourism industry. Discussions surrounding the issues of public access to beaches are usually focused on the sense of exclusion from some beaches particularly beaches associated with hotels. The hotel beaches are also purportedly the better beaches, and in this regard, it is also felt that there are not enough operational public beaches available as an alternative.

Rights of access to the foreshore, the floor of the sea and beaches in Jamaica

In Jamaica there is no statute that conveys any general rights over the foreshore or the floor of the sea save and except those provisions contained in the Beach Control Act, 1956.

The Legal Definition of a Beach is the Foreshore and Floor of the Sea. These are defined as follows:

The foreshore is

“that portion of land adjacent to the sea that lies between the ordinary high water and low water marks, being alternately covered and uncovered as the tide ebbs and flows.”



...cont./ Beaches of Jamaica: Access and Rights

The floor of the sea is:

“the soil and subsoil off the coast of the Island between low water mark and the outer limits of the territorial sea of the Island and shall be deemed to include the water column and superadjacent to the floor of the sea and the natural resources therein and the Exclusive Economic Zone.”

Ownership of the foreshore is vested in the Crown except where rights are acquired under or by virtue of the Registration of Titles Act or any express grant or licence from the Crown subsisting immediately before 1956. The portion of the beach above the foreshore may be private or public property. The Beach Control Act did not seek to convey general rights to the public to gain access to and use the foreshore or the floor of the sea. Section 3 vests ownership in the Crown and declares that no person shall be deemed to have any rights in or over the foreshore or the floor of the sea except such rights acquired under the Act. These rights include any rights enjoyed by fishermen engaged in fishing as a trade, where such rights existed immediately before the 1st June 1956.

Rights of fishing and bathing may however be acquired by custom, that is, Prescriptive Rights, and such customary rights are addressed in Section 14 of the Beach Control Act and Sections 4 and 9 of the Prescription Act, 1882. In common law, the public has no general rights of access to the foreshore or the floor of the sea or to beaches. There are no general common law rights over the foreshore except *to pass over it* for the purpose of navigation or fishing.

Privileges to bathe may be enjoyed within a licensed beach subject to the rights of the licensee. These beaches are subject to the Beach Control (Hotel, Commercial and Public Recreational Beaches) Regulations 1978 and the Beach Control (Licensing) Regulations, 1956.

Beach Access in Caribbean Islands

Rights and entitlements to the beach and the extent of land holdings along the coast are expressively different in former French and British territories. In St. Lucia which has a French colonial history, the land adjacent to the beach forms the “Queen’s Chain” and is owned by the government. As a general policy, land within the Chain cannot be purchased, only leased. Haiti, which also had a French colonial past, has a similar pattern of coastal land ownership as St. Lucia, where no private interest can own land within 16 m of high water mark.

In many of the islands once under British control as is the case in Jamaica, private ownership of coastal lands extends to the high water mark. In cases of coastline change, and unless there is specific legislation, British Common Law provides for a seaward or landward change in the



...cont./ Beaches of Jamaica: Access and Rights

property boundary only if the change is of a gradual nature. A sudden change of the property boundary, such as due to reclamation or a new sea defence structure does not change the boundary.

In Barbados, the beach is considered public property, since the foreshore is public land. The ownership of the area of beach land between the high water mark and a structure such as a property fence or a building is often unstated. This area however is typically viewed as public land and therefore available for the use and enjoyment of the public at large. In St. Vincent and the Grenadines, owners of beachfront lands must ensure that there is a public access to the beach. Permanent structures must be at least 12m from the high water mark, and permits are required from the Physical Planning and Development Board.

Availability of public access beaches

It is acknowledged that more of the island's coastline and beach areas need to be accessible and available for public use and recreation. In fact Section 12 of the Beach Control Act provides that "the Authority shall from time to time determine the needs and requirements of the public in relation to the use of any portion of land, ... the foreshore for or in connection with bathing or any other form of lawful recreation..." Most of the public bathing beaches were established through the work of the Beach Control Authority starting from the mid-1950's through acquisition of lands, reservation of beach lots in sub-divisions, negotiations with landowners and access gained by prescriptive rights. Unfortunately, over the years a significant number of these properties due to limited public funding, have been left unattended, facilities have become derelict, some taken over by squatters and some affected by coastal erosion.

A number of government agencies are in possession of these properties – traditionally referred to as public beaches. These agencies include the Natural Resources Conservation Authority (NRCA)/National Environment and Planning Agency (NEPA), the Commissioner of Lands (COL), Parish Councils, the Urban Development Corporation (UDC), the Petroleum Corporation of Jamaica (PCJ), the Tourism Product Development Company and the Fisheries Division.

Public beaches span the coast however most of these properties are located along the north coast adjacent to the major highway. On the south coast, these beaches are often a good distance away from the major highway. On average, public beaches/access points are located approximately five miles apart. The insert Map and Table provides an appreciation of the distribution and location of these properties across all parishes. In the case of St. Ann – the Parish visited by Professor Carolyn Cooper on New Year's Day, there are eight (8) such beach properties/beach access points.



...cont./ Beaches of Jamaica: Access and Rights

Four of these properties are operational and are licenced by the NRCA. Two of these properties are presently being upgraded (see Table).

As mentioned before, one of the challenges faced is the maintenance cost to operate the facilities. In the past, successive governments have endeavored to pursue a free access policy, however with limited public funding these properties have by and large, succumbed to neglect. It is in this regard that Cabinet in October 2014 by way of Cabinet Decision #39/14 agreed to the charge of a nominal entrance fee to these beaches to support maintenance and development activities.

It is acknowledged that the number of public access points/beach areas along the coast must be increased. However as a priority, the existing beach properties in disrepair will need to be rehabilitated to the standard of a safe bathing beach, scenic vista and or seaside park as is suitable.

Another category of beaches available to the public are those privately owned properties that provide access to the public at a charge. These include for example, James Bond and Bamboo/Reggae Beaches – St Mary; Waves Beach – Hillshire, St Catherine; Shan Shay, Frenchman’s, and San San Beaches in Portland. These are licensed by the NRCA as commercial recreational beaches.

Policies on beach access

The main policy instrument for the management of beaches is the Beach Control Act, administered by the Beach Control Authority (now the Natural Resources Conservation Authority). As referenced by Ms McCauley, the enactment of the Beach Control Act in 1956 was itself a recommendation from a Commission of Inquiry set up in 1954 because of public agitation that fishermen were being “squeezed out” of beaches and the public could not find places to go. It was decided to develop comprehensive legislation to deal with the problem. The objective of the Beach Control Act is to regulate the use and development of the shoreline and the floor of the sea.

Jamaica’s coastal policy as set out in parish Development Orders clearly recognizes the value of recreation and aesthetic areas and the importance of preserving access to the coast.

The most recent Development Orders prepared by the Town and Country Planning Authority have included policies on public access to the beach. For example Policy CD 3 of the Town and Country Planning (Negril and Green Island Area) Confirmed Development Order, 2015 states “The local planning authority will not grant permission for any development on land adjacent to the line of



...cont./ Beaches of Jamaica: Access and Rights

high water mark which would preclude general public access to and along the foreshore”. Policy SP C13 of the Town and Country Planning (Trelawny Parish) Confirmed Development Order, 2015 states “that the beaches listed in the Appendix will be preserved for the purposes identified and no permission will be given for any development or activity that will conflict with their use in any way.”

Strategy to increase access

The Ministry of Economic Growth and Job Creation has completed work on a Beach Access and Management Policy which outlines a clear framework for the sustainable management of our beaches, with special emphasis on the important issue of public access.

It is expected that the this Policy will be presented to Cabinet for approval as a Green Paper, together with further details of and updates on public bathing beaches early in 2017.

One of the key elements of the draft Beach Access and Management Policy is the development of the beach access programme which will:

- Identify, re-open (where necessary) and preserve existing access ways;
- Monitor the provision of access to the beach at new coastal zone development;
- Plan Government acquisition of land for access ways;
- Negotiate easements to provide access to the foreshore in existing developments;
- Designate access points to the foreshore, taking into account safety considerations and the need for access by disabled persons, where possible; and
- Address the provision of adequate parking where appropriate

The draft Policy also recommends amendment of the Beach Control Act to define the term “beach” and to give the public the right to passage along the foreshore and to bathe in the sea subject to the rights of licence holders and private property owners.

Importantly, the draft Beach Access and Management Policy speaks to the development of a Beach Management Programme for the development and rehabilitation of public beaches. The Ministry of Tourism and Entertainment through its Tourism Enhancement Fund has initiated an island wide Beach Development Programme for public beaches. The programme has over the last eighteen (18) months resulted in the rehabilitation of the Lyssons – St Thomas, Boston – Portland, Burwood – Trelawny and Annatto Bay – St Mary beaches.



...cont./ Beaches of Jamaica: Access and Rights

It is expected that the rollout of these initiatives will improved access by Jamaicans to our coast and beaches.

We are, etc.

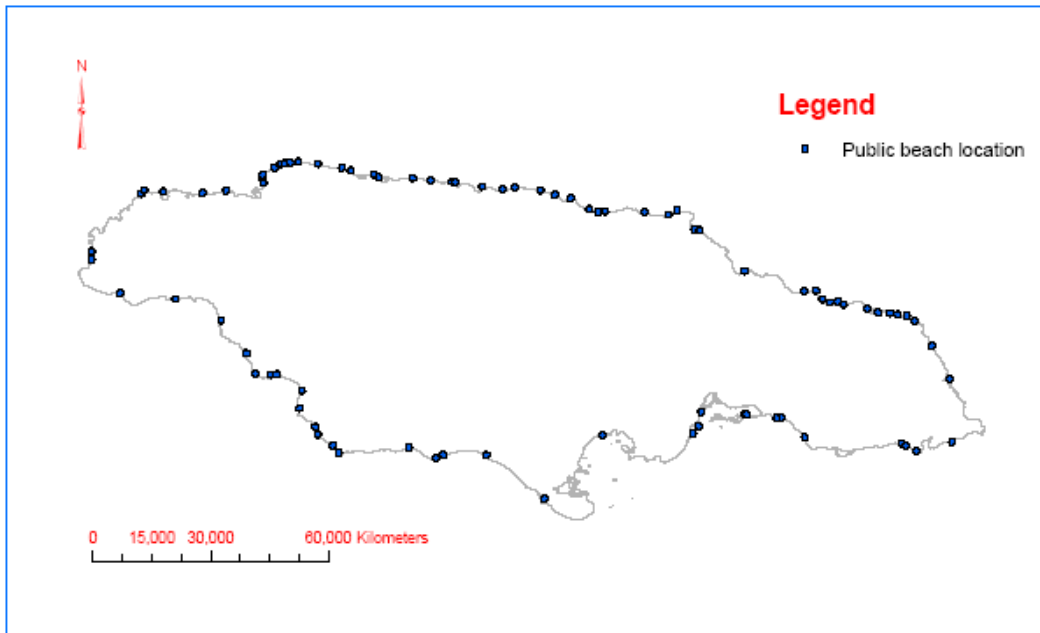
National Environment and Planning Agency (NEPA)



**Salem Beach (Sharkies) – Salem-Runaway Bay, St Ann.
Public access beach owned by the NRCA**



World Famous Boston Beach – Portland. Public access beach owned by the NRCA. Recently rehabilitated with funding from the Tourism



The location of all designated public beaches across the Island. Most public beaches are located along the North Coast

Table: Location of Public Beaches

Name Of Beach	Owner/Agency In Possession	Status
Westmoreland (6)		
Whitehouse	Ministry of Housing	Beach and facilities require rehabilitation
Bluefields Beach Park	UDC	Beach and facilities operational
Old Fort (Fort)	Westmoreland P.C.	Beach and facilities require rehabilitation
Little Bay	Reserved in subdivision.	Beach and facilities require rehabilitation
Norman Manley Beach Park	COL/Negril Area Land Authority	Beach and facilities require rehabilitation
Long Bay Beach Park 1 and 2	UDC	Beach and facilities operational (upgrade underway)
Hanover (6)		
Bloody Bay	UDC	
Lances Bay	Hanover P.C.	Beach and facilities require rehabilitation
Bulls Bay	Hanover P.C.	Beach and facilities require rehabilitation
Watson Taylor Park	Hanover P.C.	Beach and facilities require rehabilitation
Tryall	BCA/NRCA	Beach and facilities require rehabilitation
Orchard		Beach and facilities require rehabilitation
St. James (7)		
Walter Fletcher	UDC/ Aqua Sol Theme Park	Beach and facilities operational
Doctors Cave	Doctors Cave Bathing Beach Club	Beach and facilities operational
Cornwall		Beach and facilities operational
Sunset	St. James P.C.	Beach/coast access point
Coral Gardens	Reserved in subdivision	Beach/coast access point
Greenwood	St. James P.C.	Beach/coast access point
Barnett Hall	BCA/NRCA	Beach/coast access point
Trelawny (7)		
Flamingo	Reserved in sub.	Beach/coast access point
Half Moon Bay	BCA/NRCA	Beach/coast access point
Victoria Park	COL.	Beach/coast access point
Burwood	Trelawny P.C.	Beach and facilities operational
Silver Sands/ Jacob Taylor	BCA/NRCA	Beach and facilities require rehabilitation
Braco	COL	Beach and facilities require rehabilitation

Name Of Beach	Owner/Agency In Possession	Status
Rio Bueno	BCA /NRCA	Beach and facilities require rehabilitation
St. Ann (8)		
Puerto Seco	Jamaica Bauxite Mine Limited	Beach upgrade underway
Cardiff Hall (Flavours)	St. Ann P.C.	Beach and facilities operational
Salem (Sharkies)	BCA /NRCA	Beach and facilities operational
Priory	St. Ann P.C.	Beach and facilities require rehabilitation
Roxborough	St. Ann P.C.	Beach and facilities require rehabilitation
Dunn's River	UDC/St. Ann Dev. Company	Beach and facilities operational
Sailors Hole	UDC	Beach upgrade underway
Turtle Beach	UDC	Beach and facilities operational
St. Mary (5)		
Rio Nuevo	BCA/NRCA	Beach and facilities require rehabilitation
Murdock	St. Mary P.C.	Beach and facilities require rehabilitation
Pagee	COL	Beach and facilities require rehabilitation
Frontier		Beach and facilities require rehabilitation
Annotto Bay	St. Mary P.C.	Beach upgrade underway
Portland (17)		
Orange Bay	BCA/NRCA	Beach/coast access point
Rodney Hall	Reserved in Subdivision	Beach/coast access point
Hope Bay	BCA/NRCA	Beach and facilities require rehabilitation
Hermitage	Reserved in Subdivision	Beach/coast access point
Wydah	Reserved in Subdivision	Beach/coast access point
St.Margaret's Bay	BCA /NRCA	Beach and facilities require rehabilitation
Folly	COL	Beach and facilities require rehabilitation
Drapers	Reserved in subdivision	Beach and facilities require rehabilitation
Blue Hole (San- San)	Cold Harbour Limited	Beach/coast access point
Winifred's Rest	UDC	Beach and facilities operational
Boston	BCA /NRCA	Beach and facilities operational
Bryans Bay		Beach/coast access point
Long Bay		Beach and facilities require rehabilitation
Innis Bay	COL	Beach and facilities require rehabilitation
Buff Bay	BCA/NRCA	Beach/coast access point
Spring Gardens	BC.A/NRCA	Beach and facilities require rehabilitation
Manchioneal	BCA/NRCA	Beach/coast access point
St. Thomas (6)		
Prospect	Reserved in Subdivision	
Retreat	BCA/ NRCA	Beach and facilities require rehabilitation

Name Of Beach	Owner/Agency In Possession	Status
Lyssons	St. Thomas P.C.	Beach upgrade underway
Rocky Point		Beach/coast access point
Mezgars Run	Reserved in Subdivision	Beach/coast access point
Southhaven	BCA/NRCA	Beach/coast access point
Coopers Pen	BCA/NCA	Beach/coast access point
St. Andrew (2)		
Copacabana	BCA/NRCA	Beach/coast access point
Harbour Head	BCA/NRCA	Beach/coast access point
Kingston (2)		
Gunboat	COL/TPDCo	Beach and facilities require rehabilitation
Buccaneer	COL/TPDCo	Beach and facilities require rehabilitation
St. Catherine (4)		
Port Henderson	St. Catherine P.C.	Beach and facilities require rehabilitation
Fort Clarence	UDC	Beach and facilities operational
Hellshire Bay	UDC	
Marine Terminal	BCA/ NRCA	Beach/coast access point
Clarendon (2)		
Jackson Bay	BCA/NRCA	Beach and facilities require rehabilitation
Farquhars		Beach/coast access point
Manchester (4)		
Guts River	COL	Beach/coast access point
Hudson Bay	COL	Beach/coast access point
Alligator Pond	BCA/ NRCA	Beach/coast access point
Wards Bay	BCA/ NRCA	Beach/coast access point
St. Elizabeth (9)		
Great Bay	BCA/ NRCA	Beach/coast access point
Calabash Bay	BCA/ NRCA	Beach/coast access point
Billy's Bay	BCA/ NRCA	Beach/coast access point
Fort Charles	BCA/ NRCA	Beach and facilities require rehabilitation
Parottee	BCA/ NRCA	Beach/coast access point
Fullerswood	C.O.L.	Beach/coast access point
Crane	BCA/ NRCA	Beach and facilities require rehabilitation
Galleon	Reserved in sub.	Beach/coast access point
Font Hill	PCJ	Beach and facilities require rehabilitation