

Puerto Rico Navigability Report

Summary

Puerto Rico generally does not restrict public access and use of streams for recreational purposes.

State Test of Navigability

Puerto Rico has no established test to determine navigability, nor requires commercial or recreational use of a body of water to demonstrate navigability. Rather, courts in Puerto Rico have applied the common law rule that all waters within the ebb and flow of the tide are considered navigable waters.¹ On the other hand, the Supreme Court of Puerto Rico found shallow waters, where houses were built on stilts, were not navigable waters.²

Navigable waters include those waters extending from the coastline of Puerto Rico and the adjacent islands seaward to a distance of three maritime leagues.³ In 1980, Congress amended the Federal Relations Act to give the government of Puerto Rico all right, title and interest in and to and jurisdiction and authority over the submerged lands underlying the harbor areas and navigable streams and bodies of water in and around the island of Puerto Rico and the adjacent islands and waters, and the natural resources underlying such submerged lands and waters, including proprietary rights of ownership, and the rights to management, administration, leasing, use and development of such natural resources and submerged lands beneath such waters.⁴ The submerged lands transferred to the Commonwealth of Puerto Rico by the United States are of public domain.⁵

Extent of Public Rights in Navigable and Non-Navigable Rivers

Puerto Rican law declares that “[a]ll waters and bodies of water of Puerto Rico are [] the property and wealth of the People of Puerto Rico. Their use, utilization and development shall be subject to the provision of this chapter and of the regulations prescribed thereunder.”⁶ Puerto Rico defines three types of waters as public: “(1) Waters which rise continuously or intermittently on lands of public ownership[;] (2) Continuous or intermittent waters of waters of springs and creeks which run through natural channels[; and] (3) Rivers.”⁷ “The beds of creeks

¹ *Isla Nena Air Servs., Inc. v. Cessna Aircraft Co.*, 380 F. Supp. 2d 74, 77–78 (D.P.R. 2005), *aff’d*, 449 F.3d 85 (1st Cir. 2006) (“The result would be the same under a common law analysis. It has long been the rule in the United States that all waters within the ebb and flow of the tide are considered navigable waters.”)

² *A.D.C.V.P. v. Comision Servicio Publico*, 105 P.R. Dec. 219, 227 (1976) (“In the present case the houses are built with their stilts nestled in the land and part of them on flat waters that are not what are normally considered navigable waters. Of course, a keelless yola can float on a foot of water but a foot of water is not considered navigable water.”).

³ *See* 48 U.S.C. §§ 747–749; *see also* *United States v. Zenon-Encarnacion*, 185 F.Supp.2d 127 (D.P.R. 2001).

⁴ *Id.*

⁵ *See, e.g.*, *Op. of the Puerto Rico Sec’y of Justice 1981-2*, P.R. Op. Sec. Just 1981-2 (Feb. 10, 1981).

⁶ P.R. Laws Ann. tit. 12, § 1115c (West 2012).

⁷ *Id.* § 521.

belong to the owners of the estates they cross.”⁸ Beds or channels of creeks that do not cross estates, or otherwise do not belong to the owners of the estates they cross, are of public ownership, as are “[t]he natural beds or channels of rivers to the extent covered by the waters thereof during their highest ordinary rise.”⁹ The private ownership of channels of streams of pluvial waters does not carry with it the authority to do or construct any works which may cause a deviation of the water from its natural course[.]”¹⁰

Activities that are injurious to health, indecent, offensive to the senses, or obstruct free use of property so as to interfere with the comfortable enjoyment of life or property, or that is a nuisance to the well-being of a neighborhood, or to a large number of persons or that illegally obstructs free flow traffic in the usual manner by a lake, river, bay, stream channel or navigable basin, may constitute a nuisance and the subject of an action.¹¹ Also, boats and ships cannot navigate or otherwise operate in areas reserved for bathers or areas for the protection of natural and environmental resources.¹² Vessels of more than thirty horsepower cannot operate in lakes and lagoons unless expressly authorized by statute.¹³ Additional limitations and requirements appears in the Puerto Rico Navigation and Aquatic Safety Act.¹⁴

Although Puerto Rico provided a statutory right for the use of rivers for navigation and the floating of logs and rafts, those sections were repealed in 1976 and comparable provisions have not been enacted.¹⁵

Miscellaneous

Puerto Rico has many relatively short rivers and streams. Out of 1,200 bodies of water in Puerto Rico, only 50 are classified as rivers. There are around 5,400 stream and river miles. According to some studies, ten percent of the river miles support designated uses while twenty-one percent are impaired for one or more designated uses.

Some of the rivers are dammed for hydroelectric power and thus have small lakes along their courses, such as Lago de Yauco on the Yauco River. The longest river is the Grand de Arecibo, which flows to the northern coast. Other rivers include the Grand de Añasco, Bayamón, Cibuco, Culebrinas, and La Plata. Rivers in Puerto Rico are non-navigable, except close to the coastline, and none of the rivers are navigable by large vessels.

For additional information, see the Puerto Rico Department of Natural and Environmental Resources at <http://www.drna.pr.gov/>, or the Puerto Rico Department of Transportation and Public Works at <https://dtop.pr.gov/>.

⁸ *Id.* § 612.

⁹ *Id.* § 613.

¹⁰ *Id.* § 604.

¹¹ See *Hernández v. Esso Standard Oil Co.*, 429 F. Supp. 2d 469, 471–72 (D.P.R. 2006).

¹² P.R. Laws Ann. tit. 12, § 1404(2).

¹³ *Id.* § 1404(3).

¹⁴ *Id.* §§ 1401-11.

¹⁵ See, e.g., *id.* § 521 codification history.