

How To Fix Americans' Diminishing Access to the Coasts

By Kat So, Miriam Goldstein, and Shanna Edberg October 4, 2022

U.S. coasts provide a multitude of benefits to the American public. They offer leisure in the form of recreational activities and relaxation; they improve overall health and act as cooling centers; and they create economic opportunities ranging from renewable energy to fishing to tourism. Ecosystems such as salt marshes and mangroves also improve climate resilience by providing protection from storm surge and increasing flood resilience.¹ Proximity to the ocean has even been found to improve people's mental and spiritual well-being.²

More than 400 million people visit estuary and coastal waters in the United States for recreation and tourism each year, contributing approximately \$143 billion in gross domestic product and 2.5 million jobs.³ Unfortunately, historical inequities—deeply rooted in the United States' long history of segregation, racial discrimination, and exclusion—have led to restrictive coastal access policies.⁴ Across the country, there are countless instances of exclusion through restrictive parking, privatization of beaches, and outright seizure of property.⁵

The COVID-19 pandemic has further demonstrated the need for safe, accessible parks and wild places—especially for communities of color and low-income communities who have faced a disproportionate lack of access to nature yet have deep cultural connections to the ocean and coast.⁶ As the pandemic swept across the globe, wealthier and more privileged Americans were able to escape to private beaches, while those without the resources to do so were left to endure the pandemic without safe and pleasant outdoor space as a reprieve from sweltering summer temperatures.⁷ Notably, lack of community green space was also correlated with higher COVID-19 rates among communities of color.⁸

Everyone should have an equal opportunity to use and enjoy the country's coasts and beaches, regardless of race, ethnicity, residency, or socioeconomic status. In fact, equitable coastal access is a fundamental right guaranteed by the incorporation of the public trust doctrine into U.S. federal law. This doctrine, upheld by the U.S. Supreme Court in 2000, establishes that a “public beach is held for the use of the general public and not solely for use by the residents of the municipality.”⁹

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Yet the responsibility for implementing equitable public access policies falls to individual states. And according to a new data analysis from the Center for American Progress and the Hispanic Access Foundation’s analysis reveals that only 10 percent of the U.S. coast and Great Lakes is covered by strong legal protections for public access.

Fortunately, coastal resilience projects present an opportunity to reinforce and expand equitable public access to the ocean and nature while also increasing the ability of coastal communities to withstand climate change. In 2021, Congress passed the bipartisan Infrastructure Investment and Jobs Act, which included \$1 billion in funding over the next five years for ocean, coastal, and Great Lakes habitat restoration and resilience projects through the National Oceanic and Atmospheric Administration (NOAA).¹⁰ And more recently, Congress passed the Inflation Reduction Act—a major push to address the climate crisis that includes \$2.6 billion for coastal resilience projects.¹¹

This unprecedented funding presents a once-in-a-generation opportunity to make coasts and beaches more equitable. The U.S. Army Corps of Engineers (USACE) and several states already require coastal public access as a condition to receive public funds. The federal government should adopt a similar coastal public access requirement as a minimum standard to ensure that federal coastal resilience investments truly benefit all communities.

10%
Percentage of the U.S. coast and Great Lakes that is covered by strong legal protection laws

90 percent of the U.S. coast lacks strong access protections

The public trust doctrine establishes the public’s right to use and access U.S. coasts and tidal waterways, known as “public trust resources.”¹² However, each state and territory is responsible for its own implementation, enforcement, and protection of the public trust, resulting in varying levels of public access to the coasts.¹³ For example, Oregon guarantees free and public access to its coasts but faces ongoing challenges from private property owners, while in Maine beaches can be—and typically are—privately owned down to the low tide line.¹⁴

Unsurprisingly, these varied state policies have led to national inequities in public coastal access. CAP and the Hispanic Access Foundation’s analysis analysis reveals that only 10 percent of the U.S. coast and Great Lakes is covered by strong legal protections for public access.¹⁵

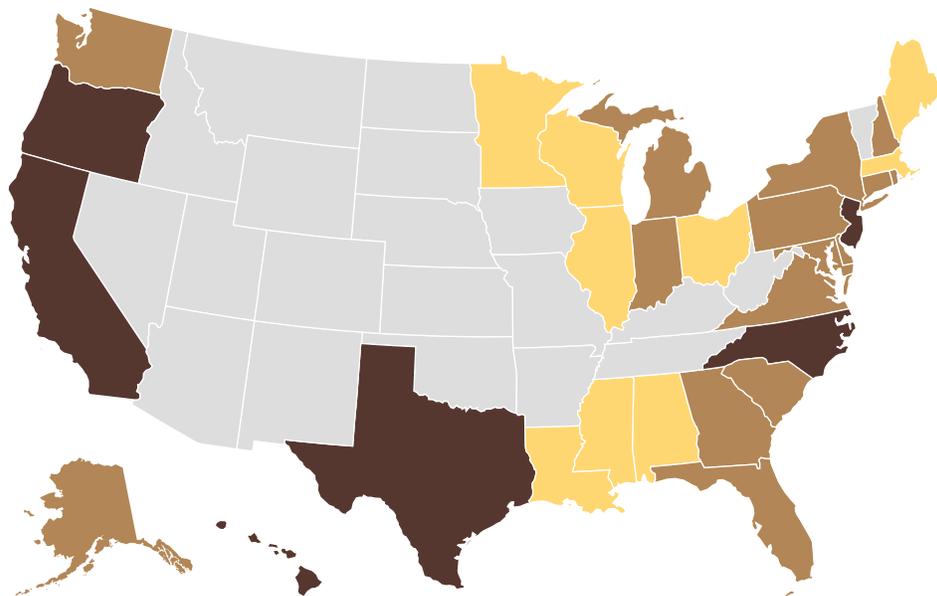
Coastal access cannot be separated from environmental justice. Across the country, states and municipalities used racist policies to specifically exclude Black, Indigenous, and other people of color from the coast. For example, in the 1920s, the city of Manhattan Beach, California, used eminent domain to seize beachfront property owned by a Black couple, Willa and Charles Bruce.¹⁶ The land then sat empty until the 1940s, at which point it was returned to Los Angeles County. In July 2022, almost 100 years later, the beachfront property was finally returned to the descendants of the Bruces. Today, the city is still only 1 percent Black.¹⁷ As recently as the 1970s, Connecticut intentionally excluded people of color from accessing the coasts through restrictive policies such as the creation of private beaches above the high tide mark and by instituting excessive beach fees.¹⁸ That legacy continues to this day. A recent analysis found that communities of color are three times more likely than white communities to live in nature-deprived places, and 70 percent of low-income communities across the country live in nature-deprived areas.¹⁹ Wealthy and predominantly white coastal communities are still instituting restrictive policies to keep coastal access private.²⁰

FIGURE 1

Only 10 percent of the U.S. coast and Great Lakes is covered by strong legal protections for public access

Strength of legal protections for public access, by state

■ Strong ■ Intermediate ■ Weak



Source: Kat So, Miriam Goldstein, and Shanna Edberg, "How To Fix Americans' Diminishing Access to the Coasts' Map Sources" (Washington: Center for American Progress, 2022), available at <https://www.americanprogress.org/wp-content/uploads/2022/10/PublicAccess-sources.pdf>

Making matters worse, the devastating impacts of climate change are already felt by both affluent and low-income coastal communities.²¹ Storm surge, sea level rise, erosion, and increased frequency of extreme weather events are threatening access to shorelines across the United States.²² For example, on the Eastern Shore of Maryland, sea level rise is damaging historical sites and wildlife refuges, including infrastructure such as pathways and boardwalks that allow public access.²³ In Massachusetts, where only 12 percent of beaches allow complete public access, record-breaking storms have destroyed beach territory the size of 84 football fields during the past 30 to 40 years.²⁴ In the wealthy enclave of the Hamptons, New York, where average home values exceed \$1 million, severe flooding and storms are constant threats.²⁵

The United States has the opportunity to protect coastal communities from the impacts of climate change by restoring coastal areas such as blue carbon ecosystems, enhancing coastal resilience, and conserving and protecting more coastal areas.²⁶ The Biden-Harris administration prioritized these actions and equitable public access as part of the *Conserving and Restoring America the Beautiful* report, released in 2021, which noted that “communities of color and low-income communities have disproportionately less access to nature’s benefits, such as clean water, clean air, and access to nature. These same communities, meanwhile, shoulder a disproportionate share of the costs of nature’s decline, including more pollution nearby.”²⁷ To work toward meeting these priorities, the United States must implement federal policies that ensure that coastal restoration and equitable public access is maintained and improved.

Public funding should require public access

There are existing funding mechanisms at both the federal and state level that require public coastal access as a condition to receive public funding for coastal restoration projects. This should be the minimum standard across the federal government for receiving public funding related to coastal infrastructure or restoration.

Federally, the USACE requires that areas that receive funding for coastal restoration projects—such as beach nourishment—be available for public use to all visitors regardless of their home area. In other words, federal assistance will only be provided to localities if the public can access shores that have been improved through federal investment. Examples of public access requirements include accessible parking facilities, a reasonable beach fee, and public access points. Additionally, access to some grants administered by NOAA as outlined in the Coastal Zone Management Act, such as Section 306A, include requirements for public access.²⁸

After Superstorm Sandy tore through the Eastern Seaboard with high winds, flooding, and severe infrastructure damage in 2012, Congress approved an aid package that included more than \$5 billion for repairs, spending at least \$1.5 billion on beach renourishment.²⁹ The USACE developed a plan to restore beaches along the New

Jersey coast that followed congressional direction to ensure public access.³⁰ While this plan was not without controversy—as some private property owners protested the restoration project before, and even after, project completion because easement terms required public access—it increased the number of access points and reasonably available parking for beachgoers.³¹ Coastal restoration projects also added to New Jersey’s climate resilience, as investments made before Superstorm Sandy hit saved an estimated \$1.9 billion by mitigating flooding and damage.³²

At the state level, the responsibility to set the standards for receiving public funds is decided on an individual state basis. States such as California, Connecticut, New Jersey, and North Carolina have explicit requirements to provide public access when public funding is used for beach renourishment.³³ Other states, such as South Carolina and Florida, require public access as a minimum standard for specific publicly funded grants.³⁴

Below are examples of model programs states have implemented to incentivize public access and coastal restoration:³⁵

- **California** enacted the California Coastal Act (CCA) in 1976 and established the California Coastal Commission by ballot initiative in 1972.³⁶ Since then, grassroots organizations have pushed the state to uphold the provisions of the law that guarantee public access to the coast. Specifically, the CCA prioritizes the public’s access to the shoreline by requiring that coastal development does not impede existing rights of access, including on private property, and encourages the creation of new public access areas. The California State Constitution further protects Californians’ rights to public coastal access in Article X, Section 4.³⁷
- **New Jersey** has implemented strong legal protections to ensure public access, codifying the public trust doctrine in 2019 and maintaining that the state owns the beach to the high-water line. However, it does not address parking availability, and beach fees are still required in many places to cross dry sand.³⁸ It also continues to prioritize public access in its Coastal Zone Management Program, and it requires public access as a provision to receive public funding for beach restoration such as beach nourishment and shoreline protection.³⁹
- **Texas** implemented the Open Beaches Act in 1959, which provides the public with “free and unrestricted right to access Texas beaches” from the water to the mean high tide line. The state also maintains a “rolling easement” that allows for the demarcation of the line for public access to shift with gradual, natural coastal processes.⁴⁰ However, the Texas Supreme Court ruled in 2012 that easements do not move onto private property when sudden and dramatic natural causes, such as hurricanes, move that line.⁴¹

Funding for coastal restoration must also be equitably distributed, prioritizing communities who have been historically excluded from these processes and access to nature. For instance, a recent analysis of North Carolina coastal communities found that of 16 communities given federal funding during the study period, 94 percent of towns were majority white, and one-quarter of the private housing in the areas that received funding were worth more than \$500,000.⁴²

Policy recommendations

In order to increase equitable public access to U.S. beaches, policymakers should take the following steps:

- **Require that coastal projects that use federal funds provide coastal access.** The many benefits of coastal restoration should extend to public access to coasts, including working waterfronts and access to commercial, recreational, and subsistence fishing. Public money should not be used to further privatize the coast or enhance private beach areas. Coastal restoration projects should also consider the infrastructure needed to support public activities and work with state and local governments to provide appropriate facilities. The existing USACE regulations could serve as a minimum standard for appropriate levels of coastal access, with adjustments for regional variation and recognition of Tribal sovereignty. Coastal restoration funds must also prioritize communities of color and low-income communities as directed by the Justice40 Initiative and informed by the Nature in Communities Committee.⁴³
- **Create an Equitable Coastal Access Advisory Group at the federal level.** While many states already have some governing body that focuses on issues of public access, there is a lack of overall consistency. A federal Equitable Coastal Access Advisory Group would provide the overarching principles and framework for states to follow while also gathering data and information from state-specific experiences. Coastal access should and must look different in different parts of the country and account for geography, historic and customary uses, Tribal sovereignty, and the history of conscious exclusion of people of color from the beach. To implement a governmentwide policy on coastal access, decision-makers must meaningfully engage with environmental justice groups, communities, local and state governments, and community-based organizations on the ground to inform this new policy.⁴⁴ A framework for implementation can be taken from the Biden-Harris administration's process for implementing the Justice40 Initiative.
- **Work to improve all dimensions of public access.** Equitable public access goes beyond the legal right to walk on the shore. For coastal access to be equitable, it must account for transportation and public transit options, costs of beach fees and parking, access to facilities such as bathrooms, boardwalks, beach appropriate movement aids such as beach wheelchairs, and the protection of traditional rights

and Indigenous uses.⁴⁵ Even more broadly, improving coastal access can and should go hand in hand with protecting and conserving coastal areas and working with communities to provide inclusive educational opportunities, from outdoor and STEM education to university and career pipelines.

- **Protect and conserve more coastal areas.** Public lands and waters are a powerful tool to ensure continued access. For example, the National Seashores (National Parks Service), National Wildlife Refuge System (U.S. Fish and Wildlife Service), and the National Estuarine Research Reserve System (NOAA) are examples of protected coastal areas that allow for public access and are managed for climate resilience. The federal government should work with states and communities to identify opportunities for expanding existing public coastal areas and seek cooperative opportunities for new ones, prioritizing those that also protect coastal resources. Moreover, both federal and state governments should work with private landowners interested in voluntarily improving coastal access, such as via easements.

Conclusion

The United States has the opportunity to set a strong minimum standard to require public access as a condition to receive public funds for coastal restoration. This would achieve the goals of the Biden-Harris administration to conserve nature, protect against worsening climate change impacts, and increase equitable access to U.S. coasts.

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Methodology

The analysis of legal protections for public access for coastal and Great Lakes states was compiled using data from various sources. The authors used state websites to identify public access laws and the specific rights to access and private ownership they delineate. For example, the degree of public ownership of shorelines can extend from the water up to the mean high tide line, the low-water mark, mean lower-low water, or the ordinary high-water mark in the case of lakes.

The analysis classified each state’s access laws as strong, intermediate, or weak according to the metrics listed in the text box below. The analysis did not include U.S. territories due to a lack of data. Tribal nations were also excluded due to the complex relationship between public coastal access and existing sovereign laws.

The authors defined strong legal protections as laws that protect the right of public access to the coast, including perpendicular access—the right to cross from the land to the water. Additionally, private owners must allow unrestricted access to the shore, usually defined as below the mean high tide line. The authors defined intermediate legal protections, which encompassed 78 percent of the states, as states that protect the public’s ability to access the coasts below a certain water level but do not guarantee lateral access or infrastructure such as walkways or parking. They may also allow private ownership of beaches. The remaining states minimally protect the rights of the public to access the coast. For example, in Wisconsin, the public is allowed to walk on the beach but must keep their feet in the water the entire time.

Strength of legal protections

Strong

- State laws protect the right of public access to the coast including lateral (ability to cross land to water), perpendicular (ability to cross coast to coast), and use.
- Private landowners must allow access to the public.
- State laws are enforced and favor increasing public access over denying access due to private ownership.

Intermediate

- State laws somewhat protect public access.
- State laws allow private ownership of beaches but may require some public access.
- Coastal access may be allowed, but no regulations to provide a means for access (walkways or parking).

Weak

- State laws recognize the public trust doctrine, but public access is very restricted.
- Beaches can be privately owned and/or owners can restrict public use.
- The public can walk on the shore but must keep feet wet (in the water).

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