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The attached information is published material from the Pennsylvania Fish and Boat Commission which was located on its website.

This information should not be regarded as legal advice. It is generally applicable to the waters of the Commonwealth but may not apply to historical or special circumstances of particular waterways of Pennsylvania.

This information in part, for example, may not apply to the unusual circumstances where the State sold the bed of Harvey's Lake to private parties on February 20, 1871, but the State legislature declared the Lake and Harvey's Creek to be public highways in legislation signed into law by Governor J. W. Geary on March 2, 1871. This latter legislation was pressed by political interests opposed to the February 1871 sale. It did not invalidate the February sale.

These two laws, in certain respects, cannot be reconciled regarding the respective rights of the estates or heirs of the original owners of the Lake's bed, whose legal ownership was never divested, and the current interests or rights of the Commonwealth, lakeside property owners, and the municipality. Untangling of these interests may require future litigation in a court proceeding.

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## Fish and Boat Commission



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# Public/Private Access

Information about public and private access, landowners and more.



## Public and Private Access

In Pennsylvania, the public's rights to fish in a particular stream depends in large part on whether the stream is "navigable." In general, the public has the right to fish in a navigable waterway.

The accepted test of navigability is whether the waters are used, or are susceptible to being used, in their ordinary condition, as highways for commerce. If the water met the navigability test at any point in its history, it remains a legally navigable waterway. There is no single published listing of all the navigable waters in Pennsylvania.

Although the public has the right to fish in a navigable stream flowing through private lands, this does not mean that the public has the right to cross posted private lands to get to the stream.

## Landowners

While this practice has benefited generations of anglers, it also means that fishing as we know it in Pennsylvania is also very susceptible to privatization. Of our stocked trout waters, 83% are on private lands. About 70% of our wild trout waters are on private lands and 59% of our Class A trout waters are also on private lands.

The number one reason waters are removed from active management programs (like stocking) by the Pennsylvania Fish and Boat Commission is because of increased landowner posting in response to poor behavior such as littering, building open fires, trampling farm fields and blocking driveways and access roads.

Preserving public access to private lands is a simple matter, but one that requires us all to take action to police ourselves. Recognize that the land you are on may very well be private property and act like a guest. Respect all postings, such as prohibitions against Sunday fishing.

[Learn about the Recreation Use of Land and Water Act](#) >

## Frequently Asked Questions

### **Are Pennsylvania's waters considered public and therefore open to legal fishing and boating?**

Some are; some aren't. In addition to the legal status of the waterway itself, the status of the adjacent - or "riparian" - lands play a significant role in determining who has what rights. Unfortunately, a brief answer cannot comprehensively address this complex subject, which has generated major court decisions and lengthy law review articles.

### **So which waters are considered to be public?**

Public waters include the great or principal rivers of the Commonwealth. The Pennsylvania Supreme Court in *Shrunk v. Schuylkill Navigation Company* in 1826 defined the great rivers to be the Ohio, Monongahela, Youghiogheny, Allegheny, Susquehanna, and its north and

west branches, Juniata, Schuylkill, Lehigh and Delaware. Public waters also include "legally navigable" rivers, streams and lakes.

### **What makes a river, stream or lake navigable for legal purposes?**

Waterways must be regarded as "navigable in law if they are navigable in fact." According to the United States Supreme Court in *The Daniel Ball* in 1870, waterways are "navigable in fact" when they are used or are susceptible of being used in their ordinary condition as highways for commerce over which trade and travel are or may be conducted in customary modes of trade and travel on water.

### **Does that mean that a waterway must currently be used for commercial purposes in order to be navigable?**

No. The test for navigability is not a contemporary test. It's a historic test that goes back to when William Penn was granted charter to Pennsylvania. Pennsylvania courts place particularly emphasis on a waterway's use during the late 18th and early 19th centuries – prior to the invention of modern modes of transportation and at a time when the only significant routes of travel, trade and commerce were on waterways.

### **What if a water that was used for commerce during the late 18th and early 19th centuries is no longer used for commercial purposes today?**

It doesn't matter. The test of navigability is rooted in its historical use.

### **Does significant recreational use make a waterway navigable?**

No. Only commercial use is considered by the courts.

### **Does the Fish and Boat Commission determine which waters are navigable and therefore public?**

No. Only a court can decide. No agency, including the Fish and Boat Commission, is authorized to determine navigability by administrative action.

### **Who owns public waters?**

The title to the beds of public waters is held in trust by the Commonwealth of Pennsylvania for the benefit of the public. In case of rivers and streams, the Commonwealth's ownership extends to ordinary low water mark, and the adjacent riparian landowner owns above the high water mark. An easement exists in favor of public between high and low

water marks. That easement includes the right to fish. In case of lakes, Commonwealth's ownership encompasses the mean pool of lake.

### **How much of a navigable waterway does the Commonwealth own?**

When it comes to navigable waters, Pennsylvania courts have said that the Commonwealth's ownership extends to the ordinary high water mark, and the adjacent riparian landowner owns above the ordinary low water mark. An easement exists in favor of public between the high and low water marks. That easement includes the right to fish.

The courts have defined the low water mark in this context as the height of water at ordinary stages of low water unaffected by drought and unchanged by artificial means. The best advice is to tell the public to stay as close to the water as possible or if they want to be safe to stay in the water. If they don't venture on to upland properties, they'll be OK. The fact that a waterway is deemed navigable does not give the public unfettered access to people's riparian lands nor permission to trespass in order to gain access to a waterway.

### **What rights does the public have in public waters?**

The rights of the public in public waters are quite broad and extend to fishing, boating, wading, floating, swimming and otherwise recreating.

### **Do the rights of the public include being able to cross private property to gain access to the public waters?**

No. The public does not have a right to cross on private property to gain access to public waters. However, if you enter a public waterway lawfully (e.g., through a public access point), you can wade, boat, float or otherwise be in the waterway where it passes through private property.

### **Can riparian landowners prevent members of the public from floating or wading in public waters that flow through their property?**

No. However, a riparian landowner can prevent the public from crossing his or her land to get to the public water.

### **Can riparian landowners prevent members of the public from fishing in public waters that flow through their property?**

No.

## **Is there a list of public waters?**

Unfortunately, no.

## **What waters are considered to be private?**

Private waters are non-navigable rivers, streams and lakes.

## **Who owns private waters?**

Title to the beds is held by the adjacent riparian landowner. If the adjacent riparian landowner owns property on only one side of a non-navigable waterway, he or she owns to the middle. When a non-navigable waterway flows through someone's property, he or she owns the entire bed of the waterway.

## **Can a riparian landowner prevent members of the public from fishing or wading in a non-navigable water?**

Yes.

## **Can a riparian landowner prevent the public from boating or floating in a non-navigable stream?**

No, because there's a "navigation servitude" that gives the public the right to use the water for purposes of navigation only. This servitude does not extend to fishing.

## **Can a riparian landowner string a cable across a non-navigable stream?**

Yes, as long as:

- the landowner owns property on both sides of the stream; and
- the cable doesn't interfere with navigation.

However, from a liability perspective, it may not be a good idea.



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