

Beach access rights and justice - a case for equity considerations in resource allocation



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Beach access

- The enjoyment of the beach is an important part of life of the Jamaica population.
- Traditionally, access to the beach has been seen as an open access right.
- Current situation is viewed as a denial of public rights especially given the number of beaches that have been given over to large all inclusive hotels and the unaffordable charges that are levied to access these beaches.
- In addition, there is the perception that there is no equality or fairness in the determination of beaches being made available to the public.

Beach access

- These concerns led NRCA to prepare a policy 'Towards a Beach Policy for Jamaica'- a policy for the use of the foreshore and the floor of the sea.
- The Policy proposes among other things, to improve public access to beaches

Beach access

- The Jamaica Hotel and Tourism Association (JHTA) has in response, expressed fears of harassment to visitors and argue that the Policy would do significant damage to the tourism industry

Beach access

- Ownership of coastal lands extends to the high water mark.
- In Jamaican law there is no definition of the beach, however the Beach Control Act (1956) defines the foreshore and the floor of the sea and vest these areas in the crown.
- By common law there is no general right of the public to use the foreshore or the floor of the sea except for those rights that are preserved in the Act

Beach access

Study Objective

- The information generated from a survey instrument administered to beach goers together with a literature review of beach access rights in a number of jurisdictions, provide the basis for the preparation of a framework for the allocation of beach access rights

Beach access

- Ecologist Garrett Hardin's "tragedy of the commons" (Hardin, 1968) provides a useful framework for understanding the pressures imposed on resources that are opened access and seemingly commonly available to all

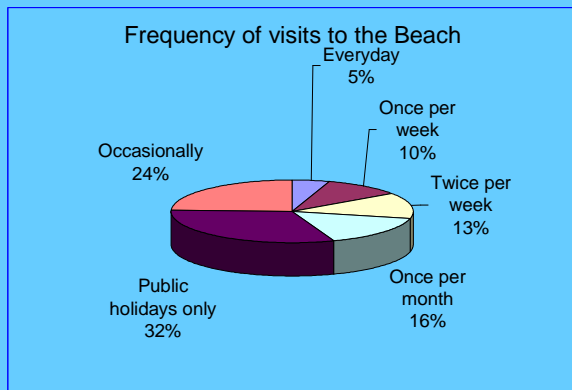
Beach access

- Aristotle - "what is common to the greatest number has the least care bestowed upon it" (see Ostrom 1990)
- Ostrom (1990) contrasted attributes of public goods to those of common-pool resource (CPR) where the resource is subtractable (one's consumption deprives others of use) and able to be overused.

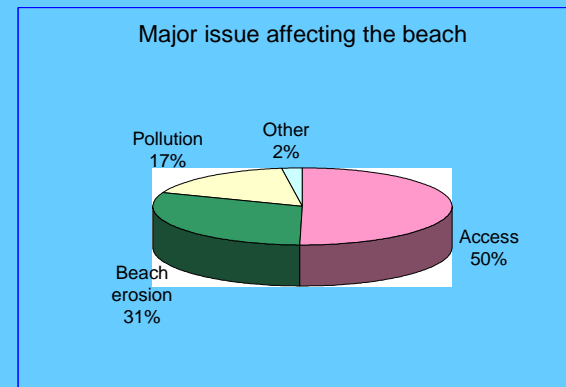
Beach access

- The study analysed the responses to a questionnaire instrument that was completed by three hundred and twenty nine (329) beach goers during the period November 2008 to April 2009.
- The instrument was administered at twenty four public beaches across the Island

Beach access



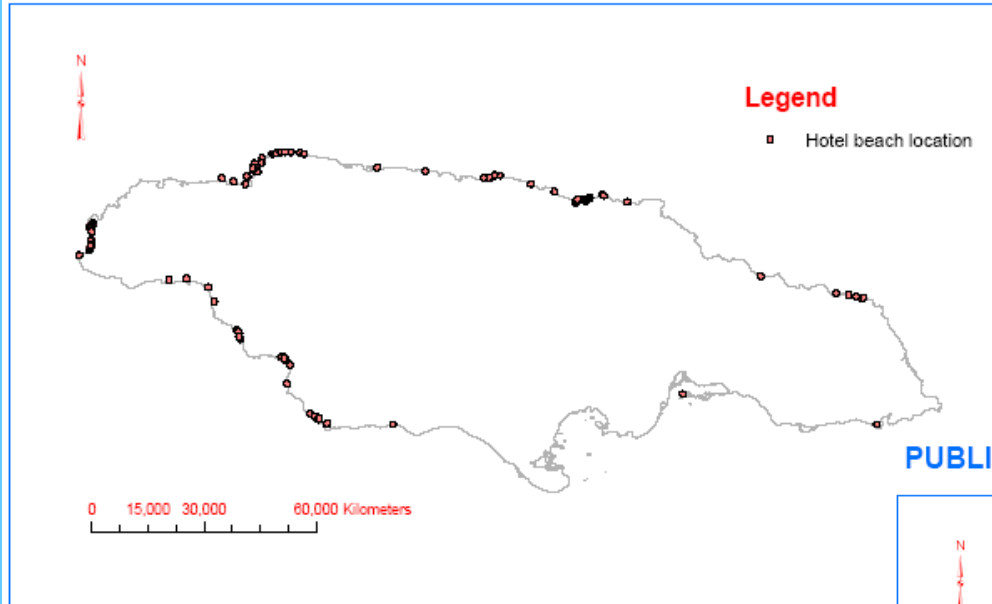
The use of the beach is a popular past time for users with at least forty two (42%) visiting once every month



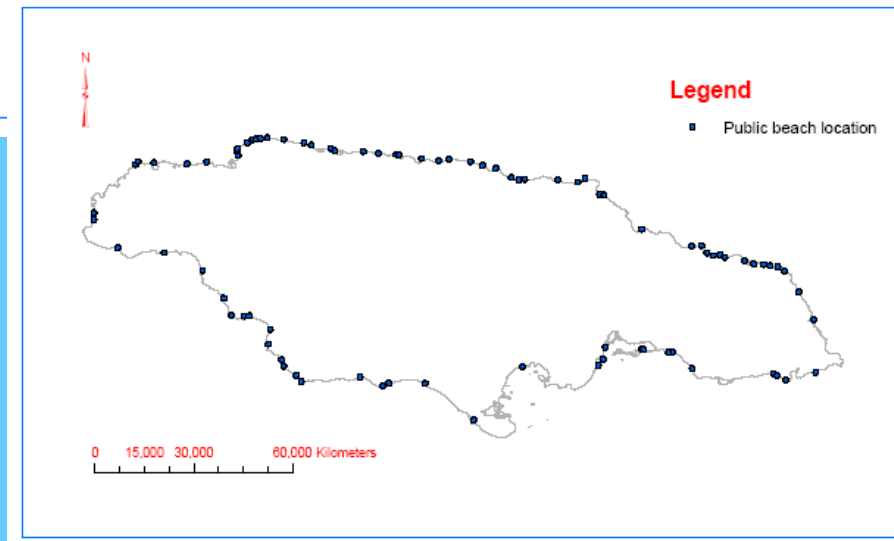
Fifty percent (50%) of the users identified the problem of access as the major issue affecting beaches

Beach access

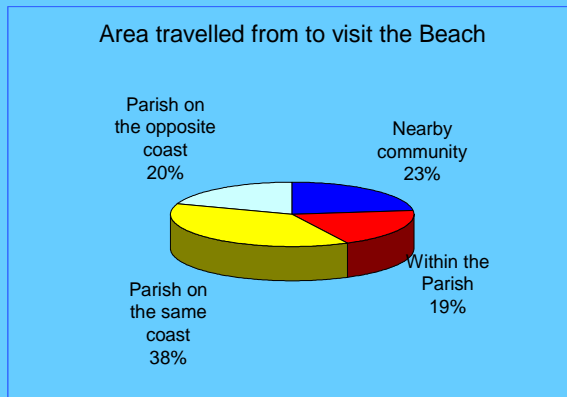
HOTEL BEACH LOCATION



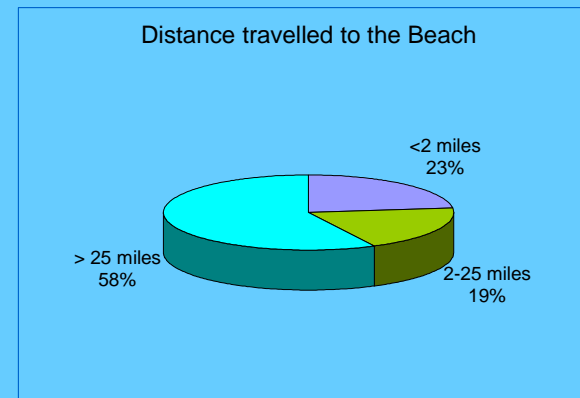
PUBLIC BEACH LOCATION



Beach access

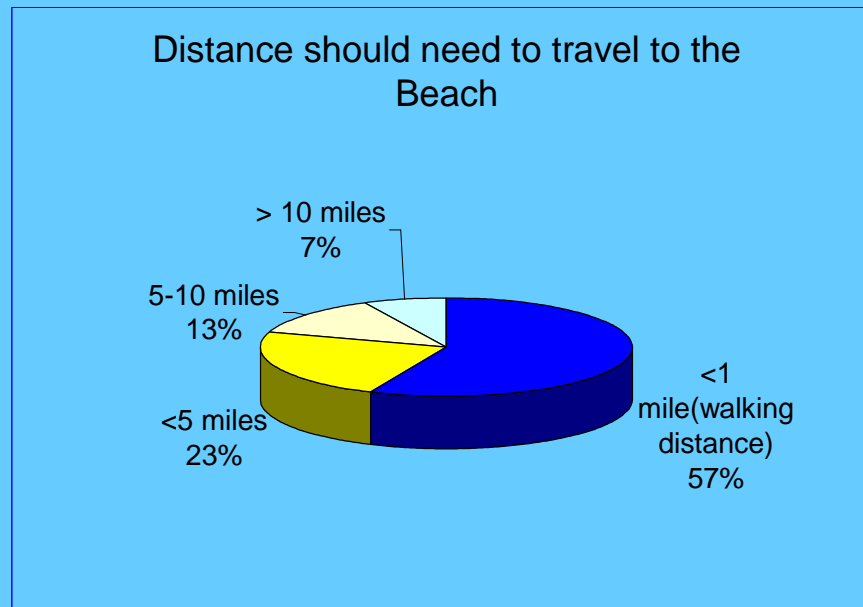


- 23% of the beach goers came from the nearby community
- 20 % were from a Parish from the opposite coast



- 58 %) of the respondents had travelled in excess of 25 miles to visit the beach.
- 23 % travelled less than 2 miles. 19% travelled between 2 and 25 miles

Beach access



Fifty seven percent (57%) of the respondent felt that they should not have to travel more than 1 mile (walking distance along the coast) in order to access the beach.

Beach access rights in small Islands

- Land ownership adjacent to the shore as evolved over time dependent largely on the Islands' colonial past. Rights to the beach and land ownership along the coast are significantly different in former French and British territories.

Beach access rights in small Islands

- 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
- In Haiti no one can own land within 16 m of high water mark,

Beach access rights in small Islands

- 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 Barbados, the beach is considered public property, since the foreshore is public land.

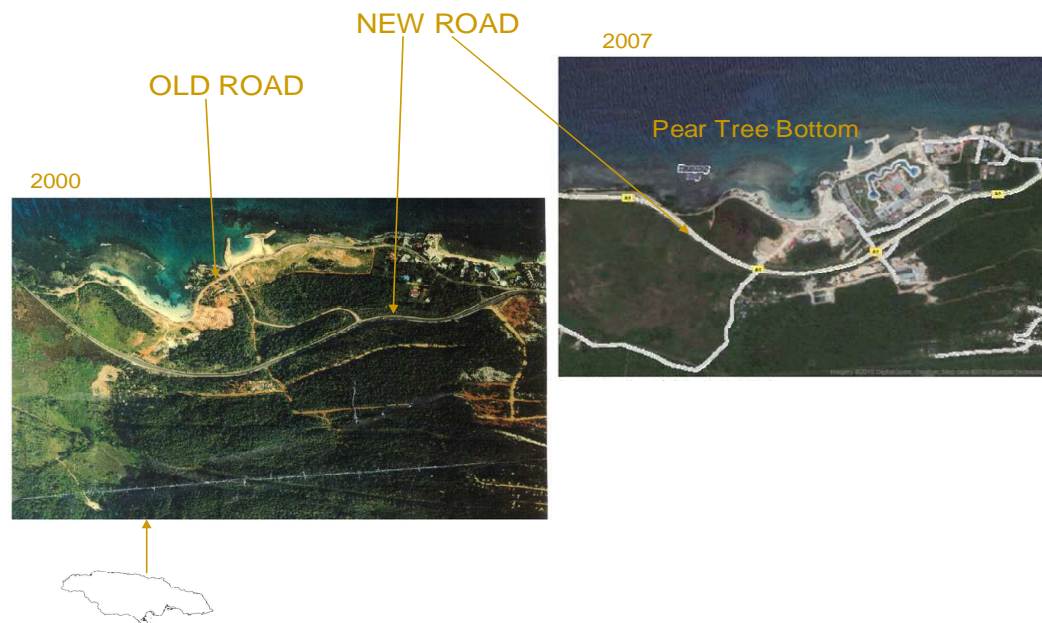
Beach access rights in the USA

- The common law in all but five states has granted the public ownership to the tidelands, the land below the high tide line, and the right of lateral access, the right to use and pass along the tidelands, for recreational use

Balancing Public and Private Interests

- Coastal road diverted
- No provision for traditional access

IMAGES OF PEAR TREE BOTTOM



Balancing Public and Private Interests

- Prescriptive Rights secured
- Conflict between fishing recreation

IMAGE OF TREASURE BEACH



Balancing Public and Private Interests

- Case for securing public interest

IMAGE OF THE BLUE LAGOON



Balancing Public and Private Interests

Favorability rank based on;

1. support a managed common pool resource strategy
2. rights ascribed to the public as against the rights of the private beach property owner
3. legislative options as against administrative and negotiated options

Framework for managed access to the beach and the foreshore

Favorability	Options	Impact	Constraints
Low	Legislation declaring open access to the beach	Negative impact on property ownership rights especially owners who use their property for domestic purposes. Shared rights to the beach. Property owners will move to secure their rights in the courts	Private land owners will still own a section of the beach despite it being open and available to the public.
Low	Legislation requiring set back of property boundaries from the sea – the new land becomes the property of the crown and available for public use (existing property boundaries will be set back over time)	Property owners loose land. Rights to the use of the beach are now shared.	Government might have to compensate property owners
Low	Legislation bestowing on the public the right to use the foreshore and floor of the sea	Shared rights to the foreshore and floor of the sea	The need for additional regulations to manage the common resource
Medium	Legislation requiring the provision of public access by property owners	Existing rights remain except for beach properties that were only used for domestic purposes which will now have to be shared.	Private property owners might challenge this action in the courts. Free access or with the payment of a fee will need to be resolved
Medium	Preserving through prescriptive rights legislation, existing access ways	The rights of public access to the foreshore and the beach is secured	Has to be proven in court and could take an extended period of time

Framework for managed access to the beach and the foreshore

Favorability	Options	Impact	Constraints
High	Requiring the provision (through the permitting system) of access to the beach at new coastal zone developments	Improved public access to the beach. Limited impact on the rights of property owners	
High	Negotiation of easements to provide access to the foreshore	Improved public access to the beach. No impact on the rights of property owners	
High	Government acquisition of land for access ways and beach lands	Improved public access to the beach. No impact on the rights of property owners	Will be a significant cost to the government. Compulsory acquisition is not viewed favorably.
High	Identify and re-open existing access ways and beach lands	Improved public access to the beach. No impact on the rights of property owners	
High	Rehabilitation of public beaches	Improved public access to the beach. No impact on the rights of property owners	Will be a significant cost (capital and maintenance) to the government

The end

Thank you.